UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): March 28, 2018

pSivida Corp.
(Exact name of registrant as specified in its charter)

Delaware	**000-51122**	**26-2774444**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

480 Pleasant Street **Watertown, MA**	**02472**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (617) 926-5000

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01. Entry into a Material Definitive Agreement.

Equity Financings

First Tranche Securities Purchase Agreement

On March 28, 2018 (the "***Closing Date***"), pSivida Corp. (the "***Company***") entered into a Securities Purchase Agreement (the "***First Tranche Securities Purchase Agreement***") with EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. (collectively, the "***First Tranche Investors***"), pursuant to which the Company offered and sold to the First Tranche Investors an aggregate of 8,606,324 shares of the Company's common stock, par value $0.001 per share (the "***Common Stock***") at a purchase price of $1.10 per share (the "***First Tranche Purchase Price***"), which was the consolidated closing bid price of the Common Stock on the Nasdaq Global Market ("***Nasdaq***") immediately preceding the execution of the First Tranche Securities Purchase Agreement (the "***First Tranche Transaction***").

The aggregate gross proceeds from the First Tranche Transaction were approximately $9.5 million. The Company intends to use the net proceeds from the First Tranche Transaction for working capital purposes and to fund the launch of the Company's products and product candidates, including any products and product candidates acquired in the Icon Acquisition (as defined below).

Subject to certain conditions, the First Tranche Investors are entitled to designate for nomination one person (the "***First Tranche Investor Designee***") to serve as a member of the Board of Directors of the Company (the "***Board***"). The initial First Tranche Investor Designee is Ronald W. Eastman.

The securities sold and issued in the First Tranche Transaction have not been registered under the Securities Act of 1933, as amended (the "***Securities Act***"), or any state securities laws, and may not be offered or sold in the United States absent registration with the Securities and Exchange Commission (the "***SEC***") or an applicable exemption from the registration requirements.

Second Tranche Securities Purchase Agreement

On the Closing Date, the Company entered into the Second Securities Purchase Agreement (the "***Second Tranche Securities Purchase Agreement***" and together with the First Tranche Securities Purchase Agreement, the "***Securities Purchase Agreements***") with the First Tranche Investors and certain other accredited investors signatory thereto (collectively, the "***Second Tranche Investors***"), pursuant to which the Company will, subject to the approval of the Company's stockholders, offer and sell to the Second Tranche Investors an aggregate of approximately $25.5 million of units (each, a "***Unit***"), with each Unit consisting of (a) one share of Common Stock and (b) one warrant to purchase a share of Common Stock (the "***Second Tranche Transaction***" and together with the First Tranche Transaction, the "***Equity Transactions***"). The First Tranche Investors have the option at any time prior to the closing of the Second Tranche Transaction to allocate the purchase of up to 50% of the Units being issued and sold to them in the Second Tranche Transaction to one or more accredited investors, subject to certain conditions set forth in the Second Securities Purchase Agreement.

The purchase price for each share of Common Stock to be issued in the Second Tranche Transaction will be an amount equal to the lower of (a) $1.265 (which is a 15% premium to the First Tranche Purchase Price) and (b) a 20% discount to the volume weighted average price of the shares of Common Stock on Nasdaq for the 20 trading days immediately prior to the closing of the Second Tranche Transaction; provided, however, that the purchase price cannot be lower than $0.88, which is a 20% discount to the First Tranche Purchase Price.

The warrants to be issued in the Second Tranche Transaction (each a "***Second Tranche Warrant***," and collectively, the "***Second Tranche Warrants***") will be exercisable any time on or after the closing of the Second Tranche Transaction until on or prior to the close of business on the 15th business day following the date on which the holders of the Second Tranche Warrants receive written notice from the Company that the Centers for Medicare & Medicaid Services ("***Medicare***") has announced that a new C-Code has been established for the Lead Product (as defined below) and will be effective at the start of the first calendar quarter after such notice. The exercise price of

each Second Tranche Warrant to be issued in the Second Tranche Transaction will be an amount equal to the lower of (a) $1.43 (a 30% premium to the First Tranche Purchase Price) and (b) a 20% discount to the volume weighted average price of the shares of Common Stock on Nasdaq for the 20 trading days immediately prior to the exercise of a Second Tranche Warrant; provided, however, that the exercise price cannot be lower than $0.88, which is a 20% discount to the First Tranche Purchase Price.

The aggregate gross proceeds from the Second Tranche Transaction are expected to be approximately $25.5 million, not including any proceeds from the exercise of the Second Tranche Warrants. The Company intends to use the net proceeds from the Second Tranche Transaction for working capital purposes and to fund the launch of the Company's products and product candidates, including any products and product candidates acquired in the Icon Acquisition.

In addition, subject to certain conditions, in the event the First Tranche Investors purchase at least 50% of the Units in the Second Tranche Transaction, the First Tranche Investors will be entitled to designate for nomination one additional director to serve as a member of the Board (the "***Second Tranche Investor Designee***"), which right shall be subject to all of the same restrictions and conditions applicable to the right to designate the First Tranche Investor Designee.

The securities to be sold and issued in the Second Tranche Transaction will not be registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from the registration requirements.

First Tranche Registration Rights Agreement

In connection with the First Tranche Transaction, the Company entered into a Registration Rights Agreement with the First Tranche Investors (the "***First Tranche Registration Rights Agreement***"), effective as of the closing of the First Tranche Transaction. Pursuant to the First Tranche Registration Rights Agreement, the First Tranche Investors may require the Company to register their shares of Common Stock for resale on a registration statement filed with the SEC and such investors have the right to "piggyback" on certain registrations by the Company. The registration rights will terminate with respect to each First Tranche Investor on the date on which such investor ceases to beneficially own shares of Common Stock or can sell all of its registrable shares without limitation pursuant to Rule 144 of the Securities Act.

Second Tranche Registration Rights Agreement

The Company will enter into a Second Registration Rights Agreement with the Second Tranche Investors (the "***Second Tranche Registration Rights Agreement***" and together with the First Tranche Registration Rights Agreement, the "***Registration Rights Agreements***"), effective as of the closing of the Second Tranche Transaction. The Second Tranche Registration Rights Agreement will be substantially similar to the First Tranche Registration Rights Agreement, except that the Company shall be required, within 30 days of the closing of the Second Tranche Transaction, to file a shelf registration statement with the SEC registering for resale the securities issued to the Second Tranche Investors in the Second Tranche Transaction and the First Tranche Transaction (to the extent that the securities acquired in the First Tranche Transaction have not already been registered pursuant to the First Tranche Registration Rights Agreement).

Private Placement Transaction Documents

The representations, warranties and covenants contained in the Securities Purchase Agreements were made solely for the benefit of the parties to such documents and may be subject to limitations agreed upon by the contracting parties. In addition, such representations, warranties and covenants (a) are intended as a way of allocating the risk between the parties to the Securities Purchase Agreements and not as statements of fact, and (b) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Accordingly, the Securities Purchase Agreements are being filed with this report only to provide investors with information regarding the terms of the transactions, and not to provide investors with any other factual information regarding the Company. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts

or condition of the Company. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Securities Purchase Agreements, which subsequent information may or may not be fully reflected in public disclosures.

The foregoing description of the Equity Transactions and the Securities Purchase Agreements, the Registration Rights Agreements and the Second Tranche Warrants does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Securities Purchase Agreements, the Registration Rights Agreements and the Second Tranche Warrants. The First Tranche Securities Purchase Agreement, the Second Tranche Securities Purchase Agreement and the First Tranche Registration Rights Agreement are filed as Exhibits 10.1, 10.2, and 10.3, respectively, to this Current Report on Form 8-K.

Debt Financing

Credit Agreement

On the Closing Date, the Company entered into a Credit Agreement (the "***Credit Agreement***") among the Company, as borrower, SWK Funding LLC, as agent (the "***Agent***"), and the lenders party thereto from time to time (the "***Lenders***"), providing for a senior secured term loan of up to $20 million (the "***Loan***"). The Credit Agreement provides for $15 million of the Loan to be advanced on the Closing Date (the "***Initial Advance***"). The remaining $5 million of the Loan may be advanced between the Closing Date and December 31, 2018, subject to satisfying the Minimum Capital Raise (as defined below) (the "***Additional Advance***"). The Loan may be increased by $10 million upon the request of the Company, subject to obtaining additional loan commitments and satisfaction of certain conditions in the Credit Agreement.

The Loan is due and payable on March 28, 2023 (the "***Maturity Date***"). The proceeds of the Loan were used to fund a portion of the Icon Acquisition and to pay fees and expenses related to the Credit Agreement and the Icon Acquisition.

The Loan bears interest at a per annum rate of the three-month LIBOR rate (subject to a 1.5% floor) plus 10.50%. The Credit Agreement permits the Company to pay interest only on the principal amount loaned thereunder for the first eight payments (payments are due on a quarterly basis). Following the interest-only period, the Company will be required to make quarterly payments of interest, plus repayments of the principal amount loaned under the Credit Agreement in an aggregate amount of up to $1,250,000 per quarter (the "***Quarterly Principal Repayment Cap***"). Subject to the Quarterly Principal Repayment Cap, the amount of any quarterly principal payments during any fiscal year of the Company is based on (x) a percentage of the year-to-date net revenue of the Company through the end of such quarter less (y) any prior quarterly principal and interest payments made during such fiscal year. In addition, the Company paid an upfront fee of 1.5% of the aggregate principal amount of the Loan. The Company is also required to pay an exit fee equal to 6% of the aggregate principal amount advanced under the Credit Agreement.

Subject to certain exceptions, the Company is required to make mandatory prepayments of the Loan with the proceeds of assets sales and insurance proceeds. In addition, the Company may make a voluntary prepayment of the Loans, in whole, but not in part, at any time on or after the first anniversary of the Closing Date. All mandatory and voluntary prepayments of the Loan are subject to the payment of prepayment premiums as follows: (i) in the case of mandatory prepayments, if prepayment occurs prior to the first anniversary of the Closing Date, a customary make-whole amount equal to the amount of interest that would have accrued on the principal amount so prepaid had it remained outstanding through the first anniversary of the Closing Date, (ii) if prepayment occurs on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, 6% of the aggregate amount of the principal prepaid and (iii) if prepayment occurs on or after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date, an amount equal to 1% of the principal prepaid. No prepayment premium is due on any principal prepaid on or after the third anniversary of the Closing Date.

The Company and certain of its existing and future domestic subsidiaries, including pSivida US, Inc. and following the Icon Acquisition, Icon Bioscience, Inc. (the "***Guarantors***"), are required to guarantee the obligations of the Company under the Credit Agreement. The obligations of the Company under the Credit Agreement and the guarantee of such obligations by the Guarantors are secured by a pledge of substantially all of their assets.

The Credit Agreement contains affirmative and negative covenants customary for financings of this type, including limitations on the Company's and its subsidiaries' ability, among other things, to incur additional debt, grant or permit additional liens, make investments and acquisitions, merge or consolidate with others, dispose of assets, pay dividends and distributions and enter into affiliate transactions, in each case, subject to certain exceptions. In addition, the Credit Agreement contains the following financial covenants requiring the Company to maintain:

- at least $4 million of cash and cash equivalents less any accounts payable that are 90 days or more past due, ("***Consolidated Unencumbered Liquid Assets***"), as of the last day of any month. In the event that the Company does not raise at least $20 million of net cash proceeds from an additional equity offering or permitted subordinated debt financing (the "***Minimum Capital Raise***") before February 15, 2019, the Company will be required to maintain at least $24 million of Consolidated Unencumbered Liquid Assets at all times until the Company completes the Minimum Capital Raise;
- beginning with the fiscal quarter ending March 31, 2019, minimum aggregate revenue of at least 75% of projected aggregate revenue; and
- beginning with the fiscal quarter ending March 31, 2019, maintain minimum EBITDA of at least 75% of projected EBITDA.

The Credit Agreement also contains representations and warranties of the Company and the Guarantors, customary for financings of this type. In addition, such representations and warranties (i) are intended not as statements of fact, but rather as a way of allocating the risk between the parties to the Credit Agreement, (ii) have been qualified by reference to confidential disclosures made by the parties in connection with the Credit Agreement and (iii) may apply standards of materiality in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. Accordingly, the Credit Agreement is included with this filing only to provide investors with information regarding the terms of the transaction, and not to provide investors with any other factual information regarding the Company. Investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Credit Agreement, which subsequent information may or may not be fully reflected in public disclosures.

The Credit Agreement also includes events of default customary for financings of this type, in certain cases subject to customary periods to cure, following which the Agent may accelerate all amounts outstanding under the Loan.

SWK Warrant

In connection with the Debt Financing, the Company issued a warrant (the "***SWK Warrant***") to the Agent to purchase (a) 409,091 shares of Common Stock (the "***Initial Advance Warrant Shares***") at an exercise price equal to the consolidated closing bid price of a share of Common Stock on the Nasdaq immediately preceding the issuance of Initial Advance Warrant Shares and (b) shares of Common Stock equal to 3% of the Additional Advance (the "***Additional Advance Warrant Shares***") at an exercise price equal to the consolidated closing bid price of a share of Common Stock on the Nasdaq immediately preceding the issuance of the Additional Advance Warrant Shares. The SWK Warrant is exercisable (i) with respect to the Initial Advance Warrant Shares, any time on or after the closing of the Debt Financing until the close of business on the 7 year anniversary of the Initial Advance and (ii) with respect to the Additional Advance Warrant Shares, any time on or after the closing of the Additional Advance until the close of business on the 7 year anniversary of the Additional Advance. The Agent may exercise the SWK Warrant on a cashless basis at any time. In the event the Agent exercises the SWK Warrant on a cashless basis the Company will not receive any proceeds. The Company has also granted the Agent certain "piggyback" registration rights requiring the Company to register the Initial Advance Warrant Shares and/or the Additional Advance Warrant Shares, as applicable, for resale with the SEC.

The Warrant, the Initial Advance Warrant Shares and the Additional Advance Warrant Shares have not been registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from the registration requirements.

The foregoing description of the Debt Financing and the Credit Agreement and the SWK Warrant does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Credit Agreement and the SWK Warrant, which are filed as Exhibits 10.4 and 4.1, respectively, to this Current Report on Form 8-K.

Acquisition of Icon Bioscience, Inc. and Agreement and Plan of Merger

On the Closing Date, the Company and its newly-created wholly-owned subsidiary, Oculus Merger Sub, Inc. ("***Merger Sub***"), entered into an Agreement and Plan of Merger (the "***Merger Agreement***") with Icon Bioscience, Inc., a Delaware corporation ("***Icon***") and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative of Icon's securityholders, pursuant to which Merger Sub was merged with and into Icon, with Icon being the surviving corporation and a wholly-owned subsidiary of the Company (the "***Icon Acquisition***"). The Icon Acquisition was consummated on the Closing Date.

Pursuant to the Merger Agreement, the Company paid the former Icon securityholders a $15.0 million cash payment upon the closing of the Icon Acquisition and is obligated to pay certain post-closing contingent cash payments upon the achievement of specified milestones based upon certain net sales and partnering revenue standards, in each case subject to the terms and conditions set forth in the Merger Agreement, including but not limited to (i) a one-time cash payment of $15.0 million payable upon the first commercial sale of Dexycu™ (the "***Lead Product***") in the United States, (ii) sales milestone payments totaling up to $95.0 million upon the achievement of certain sales thresholds and subject to other Medicare reimbursement conditions set forth therein, (iii) quarterly earn-out payments equal to 12% on net sales of the Lead Product, which earn-out payments will increase to 16% of net sales of the Lead Product to the extent aggregate annual consideration of the Lead Product exceeds $200.0 million in a given year, (iv) quarterly earn-out payments equal to 20% of partnering revenue received by the Company for the Lead Product outside of the United States, and (v) single-digit percentage quarterly earn-out payments with respect to other product candidates acquired by the Company in the Icon Acquisition.

Each of the Company and Icon has agreed to customary representations, warranties and covenants in the Merger Agreement. The Merger Agreement also includes indemnification obligations in favor of the Company from the former securityholders of Icon, including for breaches of representations, warranties, covenants and agreements made by Icon in the Merger Agreement, subject to specific caps and thresholds. In connection with the closing of the Icon Acquisition, the Company deposited $1.5 million of the merger consideration into an escrow fund for the purposes of securing the indemnification obligations of the former securityholders of Icon to the Company for any and all losses for which the Company is entitled to indemnification pursuant to the Merger Agreement. The Company may also recover indemnifiable losses by offsetting such losses against future contingent payments to be made pursuant to the Merger Agreement.

The closing of the Icon Acquisition was not subject to approval by any applicable governmental entity or the approval of the stockholders of the Company.

As a result of the Icon Acquisition, Icon became a wholly-owned subsidiary of the Company and the business conducted by the Company includes the business conducted by Icon immediately prior to the Icon Acquisition. The Merger Agreement has been included to provide investors and securityholders with information regarding its terms. It is not intended to provide any other factual information about the Company and its subsidiaries and affiliates or Icon and its affiliates. The Merger Agreement contains representations and warranties about Icon, on the one hand, and by the Company, on the other hand, made solely for the benefit of the other. The assertions embodied in those representations and warranties are qualified by information in a confidential disclosure letter delivered by each party in connection with the signing of the Merger Agreement, certain representations and warranties in the Merger Agreement were made as of a specified date, may be subject to a contractual standard of materiality different from what might be viewed as material to investors, or may have been used for the purpose of allocating risk between Icon's former securityholders and the Company. Accordingly, the representations and warranties in the Merger Agreement should not be relied on by any persons as characterizations of the actual state of

facts about the Company at the time they were made or otherwise. In addition, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

The foregoing description of the Icon Acquisition and the Merger Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference, to the full text of the Merger Agreement, which is filed as Exhibit 10.5 to this Current Report on Form 8-K.

Item 2.01. Completion of Acquisition or Disposal of Assets.

The information regarding the consummation of the Icon Acquisition on the Closing Date included under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference. The Company intends to file any financial statements that may be required by Item 9.01 of Form 8-K with respect to the Icon Acquisition within 71 calendar days after the date that this Form 8-K was required to be filed pursuant to Item 9.01(a)(4) of Form 8-K.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information regarding the consummation of the Debt Financing on the Closing Date included under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information regarding the Equity Transactions and the issuance of the securities in connection therewith, the Debt Financing and the issuance of the SWK Warrant in connection therewith, included under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

The Equity Transactions are exempt from the registration requirements of the Securities Act, and the securities issued in the Equity Transaction and the SWK Warrant issued in the Debt Financing and the shares of Common Stock issuable upon exercise thereof, are being offered and sold without registration under the Securities Act pursuant to the exemption provided by Section 4(a)(2) of the Securities Act and Rule 506 promulgated thereunder as transactions not involving a public offering, as well as similar exemptions under applicable state securities laws, in reliance upon the following facts: no general solicitation was used in the offer or sale of such securities; the recipients of the securities had adequate access to information about the Company; each recipient of such securities represented its acquisition thereof as principal for its own account and its lack of any arrangements or understandings regarding the distribution of such securities; each recipient of such securities represented its capability of evaluating the merits of an investment in the Company's securities due to its knowledge, sophistication and experience in business and financial matters; and such securities were issued as restricted securities with restricted legends referring to the Securities Act. No such securities may be offered or sold in the United States in the absence of an effective registration statement or exemption from applicable registration requirements. No statement in this document or the attached exhibits is an offer to purchase or sell or a solicitation of an offer to sell or buy the Company's securities, and no offer, solicitation or sale will be made in any jurisdiction in which such offer, solicitation or sale is unlawful.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(b) Director Resignation

On the Closing Date, and in connection with the board rights of the First Tranche Investors under the First Tranche Securities Purchase Agreement, James Barry announced his intention to resign from the Board, effective as of the Company's removal from the official list of the Australian Securities Exchange ("***ASX***").

(d) Appointment of New Director

On the Closing Date, the Board increased the size of the Board to eight members and appointed Ronald W. Eastman to serve as a director for a term commencing on the date of the closing of the First Tranche Transaction and expiring at the Annual Meeting of Stockholders of the Company in 2018 and until his successor is duly elected and qualified, except in the case of his earlier death, retirement or resignation. Mr. Eastman will also serve as a member of the Governance and Nominating Committee, the Compensation Committee and the Science Committee of the Board. Mr. Eastman will not be compensated for his service on the Board although he is entitled to seek reimbursement for reasonable expenses incurred in connection with his service on the Board and is entitled to the same benefits, including benefits under any director and officer indemnification or insurance policy maintained by the Company, as any other non-employee director of the Board. In connection with his appointment, Mr. Eastman has entered into the Company's standard director indemnification agreement, the form of which is filed as Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2016.

Mr. Eastman was appointed to the Board as the initial First Tranche Investor Designee pursuant to the terms of the First Tranche Securities Purchase Agreement. There are no family relationships between Mr. Eastman and any director or executive officer of the Company. Mr. Eastman is Manager Director of EW Healthcare Partners, which is an affiliate of the First Tranche Investors. Except for this relationship, Mr. Eastman has no direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Item 8.01. Other Events.

Delisting from the Australian Securities Exchange

On the Closing Date, the Company announced that it has requested its shares be delisted from trading on the ASX (the "***ASX Delisting***"). Following the removal of the Company's listing from the ASX, all of the Company's Common Stock will be listed solely on Nasdaq.

Press Release

On the Closing Date, the Company issued a press release announcing the consummation of the Equity Financings, the Debt Financing, the Icon Acquisition and the ASX Delisting. Copies of the press release, which is filed with this Current Report on Form 8-K as Exhibit 99.1, is hereby filed pursuant to this Item 8.01.

Forward-Looking Statements

This Current Report on Form 8-K may contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainty. Such statements are based on management's current expectations and are subject to a number of risks and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. The Company cautions investors that there can be no assurance that actual results or business conditions will not differ materially from those projected or suggested in such forward-looking statements as a result of various factors. The important factors that could cause actual operating results to differ significantly from those expressed or implied by such forward-looking statements include, but are not limited to, risks and uncertainties associated with expected benefits of the Equity Financings, the Icon Acquisition and the Debt Financing, the anticipated benefits from the removal of the Company's listing from the ASX, market conditions and other risks and uncertainties inherent in the Company's business, including those detailed from time to time in the Company's reports that it files with the SEC, including its Annual Report on Form 10-K for the year ended June 30, 2017, filed on September 13, 2017 with the SEC, and its Annual Report on Form 10-K/A filed on October 30, 2017, as well as its Quarterly Reports on Form 10-Q and periodic filings on Form 8-K. The words "believe," "will," "should," "expect," "intend," "estimate" and "anticipate," variations of such words and similar expressions identify forward-looking statements, but their absence does not mean that a statement is not a forward-looking statement. The Company disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise, unless required by law.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

The financial statements of Icon, including the report of its independent registered public accounting firm, Frank, Rimerman + Co. LLP, required by this item have not been filed on this initial Current Report on Form 8-K but will be filed by amendment on or before June 13, 2018.

(b) Pro Forma Financial Information.

The pro forma financial information required by this item has not been filed on this initial Current Report on Form 8-K but will be filed by amendment on or before June 13, 2018.

(d) Exhibits

Exhibit No.	Description
4.1	Warrant to Purchase Common Stock of pSivida Corp., issued March 28, 2018, to SWK Funding LLC.
10.1	Securities Purchase Agreement, dated as of March 28, 2018, by and among pSivida Corp. and EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P.
10.2	Second Securities Purchase Agreement, dated as of March 28, 2018, by and among pSivida Corp. and EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. and each other person identified on the signature pages thereto.
10.3	Registration Rights Agreement, dated as of March 28, 2018, by and among pSivida Corp. and EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P.
10.4	Credit Agreement, dated as of March 28, 2018, among pSivida Corp., SWK Funding LLC and the financial institutions party thereto from time to time as lenders.
10.5	Agreement and Plan of Merger, dated March 28, 2018, by and among pSivida Corp., Oculus Merger Sub, Inc., Icon Bioscience, Inc. and Shareholder Representative Services LLC.
99.1	Press release dated March 28, 2018.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

pSivida Corp.

Date: March 29, 2018

By: /s/ Nancy Lurker
Name: Nancy Lurker
Title President and Chief Executive Officer

EXHIBIT 4.1

PSIVIDA CORP.

WARRANT TO PURCHASE COMMON STOCK

Issuance Date: March 28, 2018 Warrant No. 1

THIS WARRANT TO PURCHASE COMMON STOCK (the "Warrant") certifies that, for value received, SWK Funding LLC, a Delaware limited liability company ("SWK", and together with its successors, transferees and/or assignees, the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or prior to the Applicable Termination Date, but not thereafter, to subscribe for and purchase the Warrant Shares from pSivida Corp., a Delaware corporation (the "Company"), at the Applicable Exercise Price per share. Unless otherwise defined in this Warrant, all capitalized terms shall have the meaning set forth in Section 1.

Section 1. Definitions. For purposes of this Warrant, the following terms shall have the meanings ascribed thereto:

(a) "Additional Advance" means an aggregate dollar amount equal to Five Million and No/100 Dollars ($5,000,000).

(b) "Affiliate" shall have the meaning ascribed to such term in the Credit Agreement.

(c) "Applicable Exercise Price" means a purchase price per Warrant Share equal to (i) the First Tranche Share Exercise Price if such Warrant Share is a First Tranche Share, or (ii) the Second Tranche Share Exercise Price if such Warrant Share is a Second Tranche Share, as each may be adjusted from time to time as provided herein.

(d) "Applicable Termination Date" means (i) for the First Tranche Shares, the close of business on the seven (7) year anniversary of the Issuance Date, and (ii) for the Second Tranche Shares, the close of business on the seven (7) year anniversary of the Second Tranche Issuance Date.

(e) "Business Days" shall have the meaning ascribed to such term in the Credit Agreement.

(f) "Common Stock" means the common stock of the Company, par value $0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

(g) "Common Stock Equivalents" means any securities of the Company or the subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

(h) "Credit Agreement" means the Credit Agreement dated as of March 28, 2018, among the Company, as the Borrower, SWK, as Agent, Sole Lead Arranger and Sole Bookrunner, and the Lenders from time to time party thereto.

(i) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(j) "First Tranche Shares" means 409,091 shares of Common Stock, subject to applicable adjustment hereunder.

(k) "First Tranche Share Exercise Price" means an exercise price per First Tranche Share of $1.10, subject to applicable adjustment hereunder.

(l) "Lenders" shall have the meaning ascribed to such term in the Credit Agreement.

(m) "Person" shall have the meaning ascribed to such term in the Credit Agreement.

(n) "Second Tranche Issuance Date" means the date that the Lenders make the Additional Advance to the Company as provided in Section 2.2.2 of the Credit Agreement.

(o) "Second Tranche Shares" means an aggregate number of shares of Common Stock determined by, multiplying the Additional Advance by three percent (3%), and then dividing the product thereof by the Second Tranche Share Exercise Price, ***rounded up to the nearest whole number,*** subject to applicable adjustment hereunder.

(p) "Second Tranche Share Exercise Price" means the consolidated closing bid price for a single share of Common Stock immediately preceding the closing of the Additional Advance, subject to applicable adjustment hereunder. By way of example, and in accordance with Nasdaq Listing Rule 5005(a)(22), (i) if the closing of the Additional Advance occurs during market hours before the close of the regular session at 4:00 PM Eastern Time, the Second Tranche Share Exercise Price shall be the previous trading day's consolidated closing bid price, and (ii) if the closing of the Additional Advance occurs after the close of the regular session, then the Second Tranche Share Exercise Price shall be that day's consolidated closing bid price.

(q) "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(r) "Trading Days" means a day on which the principal Trading Market is open for trading.

(s) "Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or the OTC Bulletin Board (or any successors to any of the foregoing).

(t) "Transfer Agent" means Computershare Trust Company, N.A., the current transfer agent of the Company, with a mailing address of Computershare Trust Company, N.A. 250 Royall Street, Canton, Massachusetts 02021 and any successor transfer agent of the Company.

(u) "VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Company and reasonably acceptable to the Holders of a majority in interest of the Warrant Shares then outstanding, the fees and expenses of which shall be paid by the Company.

(v) "Warrant Shares" means the First Tranche Shares, provided, however, that if the Lenders make the Additional Advance to the Company as provided in Section 2.2.2 of the Credit Agreement, then the Holder shall automatically be entitled to purchase additional shares of Common Stock hereunder, such that the term "Warrant Shares" shall thereafter mean, and include, both the First Tranche Shares and the Second Tranche Shares, as each may be adjusted from time to time hereunder.

Section 2. Exercise.

(a) Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or before the Applicable Termination Date for each Warrant Share, as applicable, by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile, electronic mail or other electronic copy of the notice of exercise form annexed hereto as Exhibit A (the "Notice of Exercise"). Within three (3) Trading Days following the date of exercise as aforesaid, the Holder shall deliver the aggregate First Tranche Share Exercise Price and/or the aggregate Second Tranche Share Exercise Price for the applicable Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the unexpired Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant

Shares available hereunder shall have the effect of lowering the outstanding number of First Tranche Shares and/or Second Tranche Shares purchasable hereunder in an amount equal to the applicable number of First Tranche Shares and/or Second Tranche Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise Form within two (2) Business Days of receipt of such notice. The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.

(b) Exercise Price. The exercise price per First Tranche Share under this Warrant shall be the First Tranche Share Exercise Price. The exercise price per Second Tranche Share under this Warrant shall be the Second Tranche Share Exercise Price.

(c) Cashless Exercise. This Warrant may be exercised, in whole or in part, by means of a "cashless exercise" in which the Holder shall be entitled to receive a certificate for the number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = the VWAP on the Trading Day immediately preceding the date on which Holder elects to exercise this Warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise;

(B) = the Applicable Exercise Price per First Tranche Share and/or Second Tranche Share, as adjusted hereunder; and

(X) = the number of First Tranche Shares and/or Second Tranche Shares, as applicable, that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

For purposes of clarity, the foregoing calculation shall be performed separately for the First Tranche Shares and Second Tranche Shares if both First Tranche Shares and Second Tranche Shares are being exercised, and the results of such calculations shall then be added together to determine the total number of Warrant Shares to be issued to the Holder in connection with such "cashless exercise". If the foregoing calculation results in a negative number, then no Warrant Shares shall be issued upon a "cashless exercise" pursuant to this Section 2(c). In the event that, upon the Applicable Termination Date, the VWAP of one share of Common Stock on the Trading Day immediately preceding the Applicable Termination Date is greater than the Applicable Exercise Price with respect to the Warrant Shares for which the Warrant is expiring on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 2(a) as to all First Tranche Shares or Second Tranche Shares, as applicable, for which it shall not previously have been exercised and that would have expired on such date, and the Company shall, within a reasonable time, deliver a certificate representing the Warrant Shares issued upon such exercise to Holder.

(d) Mechanics of Exercise.

(i) Delivery of Certificates Upon Exercise. Certificates for shares purchased hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's prime broker with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) this Warrant is being exercised via cashless exercise pursuant to Section 2(c), and otherwise by physical delivery to the address specified by the Holder in the Notice of Exercise by the date that is three (3) Trading Days after the latest of (A) the delivery to the Company of the Notice of Exercise, (B) surrender of this Warrant (if required) and (C) payment of the aggregate Applicable Exercise Price as set forth above (including by cashless exercise) (such date, the "Warrant Share Delivery Date"). The Warrant Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised, with payment to the Company of the Applicable Exercise Price (or by cashless exercise) and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(vi) prior to the issuance of such shares, having been paid.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder a certificate or the certificates representing the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder a certificate or the certificates representing the Warrant Shares pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder,

either reinstate the portion of the Warrant and equivalent number of Warrant Shares (appropriately allocated between the First Tranche Shares and the Second Tranche Shares, as applicable) for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. Notwithstanding the foregoing, the Company shall not be required to make the payments set forth herein in the case of uncertificated Warrant Shares if the Holder fails to timely file a request with the Depository Trust Corporation to receive such uncertificated Warrant Shares. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Applicable Exercise Price with respect to the Warrant Shares being exercised or round up to the next whole share.

(vi) Charges, Taxes and Expenses. Issuance of certificates for Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event certificates for Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as Exhibit B duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates), would beneficially own in excess of the Beneficial Ownership Limitation

(as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for exercises of the Warrant that are in non-compliance with the Beneficial Ownership Limitation. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon not less than 61 days' prior notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any such increase or decrease will not be effective until the 61st day after such notice is delivered to the Company and shall only be effective with respect to such Holder. The provisions of this paragraph shall be construed and

implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the First Tranche Exercise Price and the Second Tranche Exercise Price shall each be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of First Tranche Shares and Second Tranche Shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate First Tranche Exercise Price and Second Tranche Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. If the Company, at any time while the Warrant is outstanding, shall issue rights, options or warrants to any holder of Common Stock (and not to the Holder) entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the VWAP on the record date mentioned in the last sentence of this Section 3(b), then the First Tranche Exercise Price and the Second Tranche Exercise Price shall each be multiplied by a fraction, of which the denominator shall be the number of shares of the Common Stock outstanding on the date of issuance of such rights, options or warrants plus the number of additional shares of Common Stock offered for subscription or purchase, and of which the numerator shall be the number of shares of the Common Stock outstanding on the date of issuance of such rights, options or warrants plus the number of shares which the aggregate offering price of the total number of shares so offered (assuming receipt by the Company in full of all consideration payable upon exercise of such rights, options or warrants) would purchase at such VWAP. Such adjustment shall be made whenever such rights, options or warrants are issued, and shall become effective immediately after the record date for the determination of stockholders entitled to receive such rights, options or warrants.

(c) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, shall distribute to any holder of Common Stock (and not to the Holder) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security, then in each such case the First Tranche Exercise Price and the Second Tranche Exercise Price shall each be adjusted by multiplying the First Tranche Exercise Price and the Second Tranche Exercise Price, as applicable, that was in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors in good faith. In either case the adjustments shall be described in a statement provided to the Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

(d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person and the Company shall not be the surviving or continuing Person or the Company shall be the continuing or surviving Person but, in connection with such merger or consolidation, the Common Stock shall be changed into or exchanged for stock or other securities of any other Person or cash or any other property, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, or (iii) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Applicable Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Applicable Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(d) pursuant to

written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(f) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Applicable Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly mail to the Holder a notice setting forth the Applicable Exercise Price for each First Tranche Share and each Second Tranche Share, as applicable, after such adjustment and any resulting adjustment to the number of First Tranche Shares and Second Tranche Shares, as applicable, and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If during the term in which this Warrant may be exercised by the Holder (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up

of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

(a) Transferability. Subject to compliance with applicable securities laws, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual written notice to the contrary.

(d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

(a) Registration Rights. In the event that the Company, at any time prior to the Applicable Termination Date, proposes to file on behalf of any stockholder or warrantholder a registration statement under the Securities Act on any form (other than a registration statement on Form S-4 or Form S-8) for shares or warrant shares held by any stockholder or warrantholder, the Company shall provide written notice to Holder as soon as practicable of such proposed filing, but in no event shall such written notice be given to Holder later than ten (10) days prior to the date that the Company intends to file such registration statement, and, subject to the receipt by the Company of any information of the Holder reasonably required to be included in the registration statement, the Holder shall have the right, in its discretion, to include the Warrant Shares of the Holder in such registration statement at the Company's expense. For the avoidance of doubt, the Company shall not include any Second Tranche Shares in such registration statement until after the Second Tranche Issue Date.

(b) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i).

(c) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(d) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

(e) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the

necessary certificates for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Applicable Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(f) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Credit Agreement.

(g) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

(h) Provisions for the Benefit of the Lenders. Notwithstanding anything herein to the contrary, nothing contained in this Warrant shall affect, limit or impair the rights and remedies of SWK or any of its Affiliates in their capacity as a lender to the Company or any of the Company's subsidiaries pursuant to the Credit Agreement or any other agreements or instruments entered into in connection therewith. Without limiting the generality of the foregoing, SWK and the Affiliates of SWK, in exercising their rights as a lender will not have any duty to consider (a) their respective status as a direct or indirect stockholder of the Company and the Company's subsidiaries, (b) the direct or indirect ownership of the Warrant Shares of the Company or any of the Company's subsidiaries, or (c) any duty they may have to any other direct or indirect stockholder of the Company and the Company's subsidiaries, except as may be required under the applicable loan documents.

(i) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies.

(j) Notices. Except as otherwise expressly provided herein, all notices, demands or other communications to be given or delivered under or by reason of the provisions of this Warrant shall be in writing and shall be deemed to have been received: (a) when delivered personally to the recipient, (b) one (1) day after sent to the recipient by reputable overnight courier service (charges prepaid), (c) three (3) days after mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, or (d) upon confirmation of transmittal by facsimile. Such notices, demands and other communications shall be addressed (x) in the case of the Holder, to its address as set forth in the books and records of the Company or, if different, as is designated in writing from time to time by such Holder, (y) in the case of the Company, to its principal office, and (z) in the case of any assignee of this Warrant or its assignee, to such assignee at its address as designated in writing by such assignee to the Company from time to time.

(k) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(l) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(m) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(n) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(o) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(p) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

PSIVIDA CORP.

By: /s/ Nancy Lurker
Name: Nancy Lurker
Title: President and Chief Executive Officer

[COMPANY SIGNATURE PAGE TO WARRANT]

Acknowledged, accepted and agreed,

SWK FUNDING LLC
as Holder

By: SWK Holdings Corporation,
its sole Manager

By: /s/ Winston Black
Name: Winston Black
Title: Chief Executive Officer

[SWK SIGNATURE PAGE TO WARRANT]

EXHIBIT A

NOTICE OF EXERCISE

TO: PSIVIDA CORP.

(1) The undersigned hereby elects to purchase _____ First Tranche Shares [and/or] _____ Second Tranche Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the aggregate Applicable Exercise Price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue a certificate or certificates representing said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following DWAC Account Number or by physical delivery of a certificate to:

_____
_____
_____

(4) Accredited Investor. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity:_____

_____
Signature of Authorized Signatory of Investing

Entity:_____

Name of Authorized Signatory:_____
Title of Authorized Signatory:_____
Date:_____

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information.

Do not use this form to exercise the Warrant.)

FOR VALUE RECEIVED, [_____] all of or [_____] First Tranche Shares [and/or] [_____] Second Tranche Shares of the foregoing Warrant and all rights evidenced thereby are hereby assigned to _____ whose address is _____.

Dated:_____
Holder's Signature:_____
Holder's Address:_____
Signature Guaranteed:_____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever, and must be guaranteed by a bank or trust company. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

EXHIBIT 10.1

EXECUTION VERSION

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "*Agreement*") is dated as of March 28, 2018, by and among pSivida Corp., a Delaware corporation (the "*Company*"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "*Purchaser*" and collectively, the "*Purchasers*").

RECITALS

A. The Company and each Purchaser is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder (the "*Securities Act*"), and Rule 506(b) of Regulation D ("*Regulation D*") as promulgated by the United States Securities and Exchange Commission (the "*Commission*") under the Securities Act.

B. Each Purchaser, severally and not jointly, wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, (i) that aggregate number of shares of the Company's common stock, par value $0.001 per share (the "*Common Shares*"), set forth below such Purchaser's name on the signature page of this Agreement (which aggregate amount for all Purchasers together shall be 8,606,324 Common Shares and shall be collectively referred to herein as the "*Securities*").

C. Contemporaneously with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Registration Rights Agreement, substantially in the form attached hereto as Exhibit A (the "*Registration Rights Agreement*"), pursuant to which, among other things, the Company will agree to provide certain registration rights with respect to the Securities under the Securities Act.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchasers hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms shall have the meanings indicated in this Section 1.1:

"*Accountant*" has the meaning set forth in Section 3.1(f).

"*Additional Investment*" has the meaning set forth in Section 4.10.

"*Affiliate*" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is controlled by or is under common control with such Person, as such terms are used in and construed under Rule 405 under the Securities Act. With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser.

"*Agreement*" has the meaning set forth in the Preamble.

"*Applicable Laws*" has the meaning set forth in Section 3.1(u).

"*ASX*" means the Australian Securities Exchange.

"*Authorizations*" has the meaning set forth in Section 3.1(u).

"*Board of Directors"* means the board of directors of the Company.

"*Business Day*" means any day except Saturday, Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"*Closing*" means the closing of the purchase and sale of the Securities pursuant to this Agreement.

"*Closing Date*" means the Trading Day when all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all of the conditions set forth in Sections 2.1, 2.2, 5.1 and 5.2 hereof are satisfied or waived, as the case may be, or such other date as the parties may agree, which may be the date hereof.

"*Code*" has the meaning set forth in Section 3.1(dd).

"*Commission*" has the meaning set forth in the Recitals.

"*Common Shares*" has the meaning set forth in the Recitals, and also includes any other class of securities into which the Common Shares may hereafter be reclassified or changed into.

"*Company*" has the meaning set forth in the Preamble.

"*Company Counsel*" means Hogan Lovells US LLP, with offices located at 1735 Market Street, 23rd Floor, Philadelphia, PA 19103.

"*Company Deliverables*" has the meaning set forth in Section 2.2(a).

"*Control*" (including the terms "controlling", "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Credit Agreement*" means that certain Credit Agreement, dated as of even date herewith, among the Company, SWK Funding LLC, as agent, sole lead arranger and sole bookrunner, and the financial institutions party thereto from time to time as lenders, in the form approved by the Purchasers, which approval shall not be unreasonably withheld, conditioned or delayed.

"*Debt Financing*" means the transactions contemplated by the Credit Agreement.

"*Disclosure Materials*" has the meaning set forth in Section 3.1(a).

"*Disclosure Schedules*" means the Disclosure Schedules of the Company delivered concurrently herewith.

"*DTC*" means the Depository Trust Company.

"*EMA*" means the European Medicines Agency.

"*English Subsidiary*" has the meaning set forth in Section 3.1(g).

"*Environmental Laws*" has the meaning set forth in Section 3.1(x).

"*ERISA*" has the meaning set forth in Section 3.1(dd).

"*Evaluation Date*" has the meaning set forth in Section 3.1(aa).

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"*FDA*" means the U.S. Food and Drug Administration.

"*Forward-Looking Statement*" has the meaning set forth in Section 3.1(ee).

"*GAAP*" means U.S. generally accepted accounting principles, as applied on a consistent basis.

"*Icon*" means Icon Bioscience, Inc., a Delaware corporation.

"*Icon Acquisition*" means the transactions contemplated by that certain Agreement and Plan of Merger, dated as of even date herewith, by and among the Company, Icon, Oculus Merger Sub, Inc., a Delaware corporation and Shareholder Representative Services LLC, a Colorado limited liability company.

"*Indemnified Person*" has the meaning set forth in Section 4.5(b).

"*Initial Purchaser Designee*" has the meaning set forth in Section 4.9(b).

"*Intellectual Property*" has the meaning set forth in Section 3.1(w).

"*Irrevocable Transfer Agent Instructions*" means the form of transfer agent instruction letter attached hereto as Exhibit B.

"*Lock Up Period*" has the meaning set forth in Section 4.10.

"*Material Adverse Effect*" has the meaning set forth in Section 3.1(g).

"*Money Laundering Laws*" has the meaning set forth in Section 3.1(ll).

"*OFAC*" has the meaning set forth in Section 3.1(mm).

"*Off Balance Sheet Transaction*" has the meaning set forth in Section 3.1(bb).

"*Permit*" has the meaning set forth in Section 3.1(t).

"*Person*" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"*Press Release*" has the meaning set forth in Section 4.4.

"*Principal Trading Market*" means the Trading Market on which the Common Shares are primarily listed on and quoted for trading, which, as of the date of this Agreement and the Closing Date, is the Nasdaq Global Market.

"*Proceeding*" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"*Purchaser*" or "*Purchasers*" has the meaning set forth in the Recitals.

"*Purchaser Deliverables*" has the meaning set forth in Section 2.2(b).

"*Purchaser Designee*" has the meaning set forth in Section 4.9(a).

"*Purchaser Observer*" has the meaning set forth in Section 4.9(h).

"*Purchaser Party*" has the meaning set forth in Section 4.5(a).

"*Purchase Price*" means the consolidated closing bid price on the Principal Trading Market immediately preceding the time of execution of this Agreement, which shall be $1.10 per share.

"*Registration Rights Agreement*" has the meaning set forth in the Recitals.

"*Registration Statement*" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale by the Purchasers of the Registrable Securities (as defined in the Registration Rights Agreement).

"*Regulation D*" has the meaning set forth in the Recitals.

"*Required Approvals*" means (i) the filing with the Commission of one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement, (ii) filings required by applicable state securities laws, if any, (iii) the filing of a Notice of Sale of Securities on Form D with the Commission under Regulation D and any required notice filings under applicable state law, (iv) the filing of any requisite notices and/or application(s) to the Principal Trading Market and ASX for the issuance and sale of the Securities and the listing of the Securities for trading or quotation, as the case may be, thereon in the time and manner required thereby, (v) the filings required in accordance with Section 4.4 of this Agreement and (vi) those that have been made or obtained prior to the date of this Agreement.

"*Rule 144*" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"*Rule 506*" means Rule 506 of Regulation D promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"*Rule 506(d) Related Party*" has the meaning set forth in Section 3.2(d).

"*Sarbanes-Oxley Act*" has the meaning set forth in Section 3.1(f).

"*SEC Reports*" has the meaning set forth in Section 3.1(a).

"*Second Registration Rights Agreement*" means the Registration Rights Agreement, dated as of even date herewith, by and among the Company, each of the Purchasers and certain other purchasers from time to time, as contemplated by the Second Securities Purchase Agreement.

"*Second Securities Purchase Agreement*" means the Securities Purchase Agreement, dated as of even date herewith, by and among the Company, each of the Purchasers and certain other purchasers from time to time.

"*Secretary's Certificate*" has the meaning set forth in Section 2.2(a)(v).

"*Securities*" has the meaning set forth in the Recitals.

"*Securities Act*" has the meaning set forth in the Recitals.

"*Stock Certificates*" has the meaning set forth in Section 2.1(c).

"*Subscription Amount*" means, with respect to each Purchaser, the aggregate amount to be paid for the Securities purchased hereunder as indicated on such Purchaser's signature page to this Agreement next to the heading "Aggregate Purchase Price (Subscription Amount)" in United States dollars and in immediately available funds.

"*Subsidiary*" or "*Subsidiaries*" has the meaning set forth in Section 3.1(g).

"*SWK Warrant*" means the warrant to purchase Common Shares issued in connection with the Debt Financing.

"*Trading Day*" means (i) a day on which the Common Shares are listed or quoted and traded on its Principal Trading Market (other than the OTC Bulletin Board), or (ii) if the Common Shares are not listed on a Trading Market (other than the OTC Bulletin Board), a day on which the Common Shares are traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Shares are not quoted on any Trading Market, a day on which the Common Shares are quoted in the over-the-counter market as reported in the "pink sheets" by OTC Markets LLC (or any similar organization or agency succeeding to its functions of reporting prices); *provided*, that in the event that the Common Shares are not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

"*Trading Market*" means whichever of the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTC Bulletin Board on which the Common Shares are listed or quoted for trading on the date in question.

"*Transaction Documents*" means this Agreement, the schedules and exhibits attached hereto, the Registration Rights Agreement, the Irrevocable Transfer Agent Instructions and any other documents or agreements explicitly contemplated hereunder and thereunder.

"*Transfer Agent*" means Computershare Trust Company, N.A., or any successor transfer agent for the Company.

"*Voting Rights Rule*" has the meaning set forth in Section 4.9(a).

ARTICLE II
PURCHASE AND SALE

2.1 Closing.

(a) Amount. Subject to the terms and conditions set forth in this Agreement, at the Closing, the Company shall issue and sell to each Purchaser, and each Purchaser shall, severally and not jointly, purchase from the Company, such number of Common Shares equal to the quotient resulting from dividing (i) the Subscription Amount for such Purchaser by (ii) the Purchase Price, rounded down to the nearest whole Common Share; *provided however*, in no event shall the aggregate number of Common Shares (1) issued and sold to the Purchasers and (2) underlying warrants to purchase Common Shares issued in connection with the Debt Financing exceed 19.9% of the Company's outstanding voting stock, prior to giving effect to the Common Shares issued pursuant to this Agreement.

(b) Closing. The Closing of the purchase and sale of the Securities shall take place at the offices of Reed Smith LLP, 599 Lexington Avenue, New York, NY 10022 on the Closing Date or at such other locations or remotely by facsimile transmission or other electronic means as the parties may mutually agree.

(c) Form of Payment. On the Closing Date, each Purchaser shall wire its Subscription Amount, in United States dollars and in immediately available funds, to the account of the Company, in accordance with instructions delivered to the Purchasers on or prior to the Closing Date. On the Closing Date, (i) the Company shall deliver, in immediately available funds to the Purchasers, the reimbursable expenses payable to the Purchasers pursuant to Section 6.1 of this Agreement (which fees and expenses shall be set forth in instructions from the Purchasers to the Company), and (ii) the Company shall irrevocably instruct the Transfer Agent to provide to each Purchaser one or more stock certificates, free and clear of all restrictive and other legends (except as expressly provided in Section 4.1(b) hereof), evidencing the number of Securities such Purchaser is purchasing as is set forth on such Purchaser's signature page to this Agreement next to the heading "Number of Securities to be Acquired" (the "*Stock Certificates*") within two (2) Trading Days after the Closing.

2.2 Closing Deliveries.

(a) On or prior to the Closing, the Company shall issue, deliver or cause to be delivered to each Purchaser the following (the "*Company Deliverables*"):

(i) this Agreement, duly executed by the Company;

(ii) a legal opinion of Company Counsel, dated as of the Closing Date in form and substance reasonably satisfactory to the Purchasers, executed by such counsel and addressed to the Purchasers;

(iii) the Registration Rights Agreement, duly executed by the Company;

(iv) duly executed Irrevocable Transfer Agent Instructions, in substantially the form attached hereto as Exhibit B, acknowledged in writing by the Transfer Agent instructing the Transfer Agent to deliver the Stock Certificates to the applicable Purchaser within two (2) Trading Days;

(v) a certificate of the Secretary of the Company (the "*Secretary's Certificate*"), dated the Closing Date, (a) certifying the resolutions adopted by the Board of Directors approving the transactions contemplated by this Agreement and the other Transaction Documents and the issuance of the Securities, (b) certifying the current versions of the certificate of incorporation, as amended, and by-laws of the Company and (c) certifying as to the signatures and authority of Persons executing the Transaction Documents and related documents on behalf of the Company, in the form attached hereto as Exhibit C;

(vi) a certificate, dated as of the Closing Date and signed by the Company's Chief Executive Officer certifying to the fulfillment of the conditions specified in Sections 5.1(a), and (b) and (e) of this Agreement, in the form attached hereto as Exhibit D;

(vii) the Second Securities Purchase Agreement, duly executed by the Company;

(viii) the Second Registration Rights Agreement, duly executed by the Company; and

(ix) such other information, certificates and documents as the Purchasers may reasonably request.

(b) On or prior to the Closing, each Purchaser shall deliver or cause to be delivered to the Company the following (the "*Purchaser Deliverables*"):

(i) this Agreement, duly executed by each Purchaser;

(ii) its Subscription Amount, in United States dollars and in immediately available funds, in the amount set forth as the "Purchase Price" indicated below such Purchaser's name on the applicable signature page hereto under the heading "Aggregate Purchase Price (Subscription Amount)" by wire transfer to the Company;

(iii) the Registration Rights Agreement, duly executed by such Purchaser;

(iv) the Second Securities Purchase Agreement, duly executed by each Purchaser;

(v) the Second Registration Rights Agreement, duly executed by each Purchaser; and

(vi) a fully completed and duly executed Accredited Investor Questionnaire, reasonably satisfactory to the Company, in the form attached hereto as Exhibit E.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company . The Company hereby represents and warrants to, and agrees with the Purchasers that as of the date of this Agreement, and on the Closing Date, unless such representation, warranty or agreement specifies a different date or time as follows:

(a) SEC Reports; Disclosure Materials. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "*SEC Reports*", and the SEC Reports, together with the Disclosure Schedules and the Form 8-K required to be filed pursuant to Section 4.4, being collectively referred to as the "*Disclosure Materials*") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective filing dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company does not have pending before the Commission any request for confidential treatment of information or any comments from the Commission which have not been resolved.

(b) Disclosure. All of the disclosure furnished by or on behalf of the Company to the Purchasers, whether oral or written, regarding the Company and its Subsidiaries, their businesses and the transactions contemplated by the Transaction Documents, the Icon Acquisition and the Debt Financing, is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2.

(c) Ineligible Issuer. The Company was not and is not an ineligible issuer as defined in Rule 405 for purposes of Rule 144(i).

(d) Financial Information. The consolidated financial statements of the Company included or incorporated by reference in the SEC Reports, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company for the periods specified and have been prepared in compliance with the requirements of the Securities Act and Exchange Act, as applicable, and in conformity with GAAP (except (i) for such adjustments to accounting standards and practices as are noted therein or (ii) in the case of unaudited interim financial statements, to the extent that they may not include footnotes or may be condensed or summary statements) during the periods involved; the other financial and statistical data with respect to the Company and the Subsidiaries contained or incorporated by reference in the SEC Reports, are accurately and fairly presented in all material respects and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the SEC Reports that are not included or incorporated by reference as required; the Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off balance sheet obligations), not described in the SEC Reports which are required to be described in the SEC Reports; and all disclosures contained or incorporated by reference in the SEC Reports, if any, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act or Item 10 of Regulation S-K under the Securities Act, to the extent applicable.

(e) Books and Records. The minute books of the Company and the Subsidiaries contain records that are in all material respects accurate of all meetings and other actions of its directors and stockholders for the five year period prior to the Closing Date. The other books and records of the Company have in all material respects been maintained in accordance with prudent business practices and are accurate in all material respects.

(f) Independent Public Accountant. Deloitte & Touche LLP (the "*Accountant*"), whose report on the consolidated financial statements of the Company is filed with the Commission as part of the Company's most recent Annual Report on Form 10-K filed with the Commission, are and, during the periods covered by their report, were independent public accountants within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the knowledge of the Company, with due inquiry, the Accountant is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the "*Sarbanes-Oxley Act*") with respect to the Company.

(g) Organization. The Company and, except for pSiMedica Limited (the "*English Subsidiary*"), any subsidiary that is a significant subsidiary (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the Commission) (each, a "*Subsidiary*", collectively, the "*Subsidiaries*"), are duly organized, validly existing as a corporation and in good standing under the laws of their respective jurisdictions of organization. The Company and, except for the English Subsidiary, the Subsidiaries are duly licensed or qualified as a foreign corporation for transaction of business and in good standing under the laws of each other jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such license or qualification, and have all corporate power and authority necessary to own or hold their respective properties and to conduct their respective businesses as described in the SEC Reports, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect or would reasonably be expected to have a material adverse effect on the assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations of the Company and such Subsidiaries taken as a whole, or prevent the consummation of the transactions contemplated hereby (a "*Material Adverse Effect*"). The English Subsidiary is properly incorporated and validly existing under the laws of England. The English Subsidiary has the right, power and authority to perform its business as currently conducted and as disclosed in the SEC Reports and has taken any necessary corporate or other actions to authorize the performance of its business as currently conducted and as disclosed in the SEC Reports.

(h) Subsidiaries. The Company's only Subsidiaries are set forth on Schedule 3.1(h). Except with respect to any liens imposed on the equity interests of the Subsidiaries pursuant to the Credit Agreement, the Company owns directly or indirectly, all of the equity interests of the Subsidiaries, free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, and all the equity interests of the Subsidiaries are validly issued and are fully paid, non-assessable and free of preemptive and similar rights.

(i) No Violation or Default. Neither the Company nor any Subsidiary is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound or to which any of the property or assets of the Company or any Subsidiary is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company, no other party under any material contract or other agreement to which it or any Subsidiary is a party is in default in any respect thereunder where such default would reasonably be expected to have a Material Adverse Effect.

(j) No Material Adverse Effect. Since the date of the most recent financial statements of the Company included or incorporated by reference in the SEC Reports, there has not been (i) any Material Adverse Effect, (ii) any transaction that is material to the Company and the Subsidiaries taken as a whole, except for the Icon Acquisition and the transactions contemplated by the Second Securities Purchase Agreement and the Credit Agreement, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or the Subsidiaries that is material to the Company and the Subsidiaries taken as a whole, except for the Icon Acquisition and the transactions contemplated by the Credit Agreement, (iv) any material change in the capital stock (other than (A) the grant of equity incentives under the Company's existing stock option plans or other equity incentive plans approved by the Company's stockholders or as inducement grants, (B) changes in the number of outstanding Common Shares of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Shares outstanding on the date hereof, (C) as a result of the Securities issued under this Agreement, the Second Securities Purchase Agreement and the SWK Warrant, (D) any repurchases of capital stock of the Company, (E) as described in a proxy statement filed on Schedule 14A or a Registration Statement on Form S-4, or (F) as has been publicly announced or disclosed) or outstanding long-term indebtedness of the Company or the Subsidiaries or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company or any Subsidiary, other than in each case above in the ordinary course of business or as otherwise disclosed in the SEC Reports.

(k) Capitalization. The authorized, issued and outstanding share capital of the Company is as set forth on Schedule 3.1(k). The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid, and non-assessable and were issued in compliance with all federal and state securities laws. None of the outstanding shares of capital stock of the Company was issued in violation of the preemptive or other similar rights of any security holder of the Company. Except as a result of (i) the purchase and sale of the Securities under this Agreement, (ii) the purchase and sale of the Securities under the Second Securities Purchase Agreement, and (iii) the issuance of the SWK Warrant, and except as set forth in the SEC Reports, there are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any Common Shares, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional Common Shares. The issuance and sale of the Securities will not obligate the Company to issue Common Shares or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no stockholders agreements, voting agreements or other agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(l) Authorization; Enforceability. The Company has full legal right, power and authority to enter into the Transaction Documents and perform the transactions contemplated hereby. The Transaction Documents have been duly authorized, executed and delivered by the Company and each is a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) insofar as indemnification and contribution provisions may be limited by applicable law.

(m) Authorization of Securities. The Securities, when issued and delivered pursuant to this Agreement against payment therefor as provided herein, will be duly and validly authorized and issued and fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or other claim (other than any pledge, lien, encumbrance, securities interest or other claim arising from an act or omission of a Purchaser), including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights.

(n) No Consents Required. No consent, waiver, approval, authorization, order, registration or qualification of or with any court or arbitrator or any governmental or regulatory authority, including the Nasdaq or ASX, or any other Person, including the Company's stockholders, is required for the execution, delivery and performance by the Company of the Transaction Agreements, and the issuance and sale by the Company of the Securities as contemplated hereby, other than the Required Approvals. The Company has filed the Listing of Additional Shares Notification with the Principal Trading Market and will, as soon as is reasonably practicable following the execution of this Agreement, but within any proscribed time periods set forth in or otherwise required by the rules and regulations of the ASX, lodge an Appendix 3B with ASX, regarding the Securities to be issued pursuant to this Agreement.

(o) No Preferential Rights. (i) No Person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act, has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Shares or other securities of the Company (other than upon the exercise of options or warrants to purchase Common Shares or settlement of restricted stock units into shares of Common Shares or upon the exercise of options or settlement of restricted stock units that may be granted from time to time under the Company's equity incentive plans or otherwise approved by the Board of Directors or an authorized committee thereof prior to the date hereof), (ii) no Person has any preemptive rights, rights of first refusal, or any other rights (whether pursuant to a "poison pill" provision or otherwise) to purchase any Common Shares or shares of any other capital stock or other securities of the Company from the Company that have not been duly waived with respect to the offering contemplated hereby, (iii) no Person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Securities offered hereunder, and (iv) no Person has the right, contractual or otherwise, to require the Company to register under the Securities Act any Common Shares or shares of any other capital stock or other securities of the Company, or to include any such shares or other securities in the Registration Statement as a result of the filing or effectiveness of the Registration Statement or the sale of the Securities as contemplated thereby or otherwise, other than the SWK Warrant.

(p) No Conflicts. Neither the execution of this Agreement, nor the issuance, offering or sale of the Securities, nor the consummation of any of the transactions contemplated in the Transaction Documents, nor the compliance by the Company with the terms and provisions of the Transaction Documents will conflict with, or will result in a breach of, any of the terms and provisions of, or has constituted or will constitute a default under, or has resulted in or will result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any contract or other agreement to which the Company may be bound or to which any of the property or assets of the Company is subject, except (i) such conflicts, breaches or defaults as may have been waived and (ii) such conflicts, breaches and defaults that would not reasonably be expected to have a Material Adverse Effect; nor will such action result (x) in any violation of the provisions of the organizational or governing documents of the Company, or (y) in any violation of the provisions of any statute or any order, rule or regulation applicable to the Company or of any court or of any federal, state or other regulatory authority or other government body having jurisdiction over the Company, except where such violation would not reasonably be expected to have a Material Adverse Effect.

(q) No Material Defaults. Neither the Company nor any Subsidiary has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The Company has not filed a report pursuant to Section 13(a) or 15(d) of the Exchange Act since the filing of its last Annual Report on Form 10-K, indicating that it (i) has failed to pay any dividend or sinking fund installment on preferred stock or (ii) has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(r) Enforceability of Agreements. To the knowledge of the Company, all agreements between the Company and third parties expressly referenced in the Disclosure Materials, other than such agreements that have expired by their terms or whose termination is disclosed in Disclosure Materials, are legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification provisions of certain agreements may be limited by federal or state securities laws or public policy considerations in respect thereof, and except for any unenforceability that, individually or in the aggregate, would not unreasonably be expected to have a Material Adverse Effect.

(s) No Litigation. There are no legal, governmental or regulatory Proceedings pending, nor, to the Company's knowledge, any legal, governmental or regulatory investigations, to which the Company or a Subsidiary is a party or to which any property of the Company or any Subsidiary is the subject that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or materially and adversely affect the ability of the Company to perform its obligations under the Transaction Agreements; to the Company's knowledge, no such actions, suits or Proceedings are threatened or contemplated by any governmental or regulatory authority or threatened by others that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, except as disclosed in the SEC Reports; and (i) there are no current or pending legal, governmental or regulatory investigations, actions, suits or Proceedings that are required under the Securities Act to be described in the Disclosure Materials that are not described in the Disclosure Materials; and (ii) there are no contracts or other documents that are required under the Securities Act or Exchange Act to be filed as exhibits to the SEC Reports that are not so filed.

(t) Licenses and Permits. The Company and the Subsidiaries possess or have obtained, all licenses, certificates, consents, orders, approvals, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the SEC Reports (the "*Permits*"), except where the failure to possess, obtain or make the same would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary have received written notice of any Proceeding relating to revocation or modification of any such Permit or has any reason to believe that such Permit will not be renewed in the ordinary course, except where the failure to obtain any such renewal would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(u) Compliance with Applicable Laws. The Company and the Subsidiaries: (i) are in compliance with all statutes, rules and regulations applicable to the testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product under development, manufactured or distributed by the Company or the Subsidiaries ("*Applicable Laws*"), except where such noncompliance would not

reasonably be expected to have a Material Adverse Effect, (ii) have not received any Form 483 from the FDA, notice of adverse finding, warning letter, or other written correspondence or notice from the FDA, the EMA, or any other federal, state, local or foreign governmental or regulatory authority alleging or asserting material noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("*Authorizations*"), that would, individually or in the aggregate, result in a Material Adverse Effect; (iii) possess all material Authorizations and such Authorizations are valid and in full force and effect and neither the Company nor the Subsidiaries is in violation of any term of any such Authorizations except where such nonpossession, failure or noncompliance would not reasonably be expected to have a Material Adverse Effect; (iv) have not received written notice of any claim, action, suit, Proceeding, hearing, enforcement, investigation, arbitration or other action from the FDA, the EMA, or any other federal, state, local or foreign governmental or regulatory authority or third party alleging that any Company product, operation or activity is in violation of any Applicable Laws or Authorizations which noncompliance would reasonably be expected to have a Material Adverse Effect and has no knowledge that the FDA, the EMA, or any other federal, state, local or foreign governmental or regulatory authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or Proceeding against the Company; (v) have not received written notice that the FDA, EMA, or any other federal, state, local or foreign governmental or regulatory authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any material Authorizations that would reasonably be expected to have a Material Adverse Effect and has no knowledge that the FDA, EMA, or any other federal, state, local or foreign governmental or regulatory authority is considering such action; and (vi) have filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations except where the failure to file, obtain, maintain or submit such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments would not result in a Material Adverse Effect, and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were materially complete and correct on the date filed (or were corrected or supplemented by a subsequent submission) except such incompletions and incorrections as would not reasonably be expected to result in a Material Adverse Effect.

(v) Title to Real and Personal Property. The Company and the Subsidiaries have good and valid title in fee simple to all items of real property and good and valid title to all personal property described in the SEC Reports as being owned by them that are material to the businesses of the Company or such Subsidiary, in each case free and clear of all liens, encumbrances and claims, except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries or (ii) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. To the knowledge of the Company, any real property described in the SEC Reports as being leased by the Company and the Subsidiaries is held by them under valid, existing and enforceable leases, except those that (A) do not materially interfere with the use made or proposed to be made of such property by the Company or the Subsidiaries or (B) would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect.

(w) Intellectual Property. The Company and the Subsidiaries own or possess adequate enforceable rights to use all patents, patent applications, trademarks (both registered and unregistered), service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the "*Intellectual Property*"), necessary for the conduct of their respective businesses as conducted as of the date hereof, except to the extent that the failure to own or possess adequate rights to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company and the Subsidiaries have not received any written notice of any claim of infringement or conflict that asserted

Intellectual Property rights of others, which infringement or conflict would reasonably be expected to result in a Material Adverse Effect; there are no pending, or to the knowledge of the Company, threatened judicial Proceedings or interference proceedings against the Company or its Subsidiaries challenging the Company's or any of its Subsidiary's rights in or to or the validity of the scope of any of the Company's or any Subsidiary's patents, patent applications or proprietary information; to the knowledge of the Company, no other entity or individual has any right or claim in any of the Company's or any of its Subsidiary's patents, patent applications or any patent to be issued therefrom by virtue of any contract, license or other agreement entered into between such entity or individual and the Company or any Subsidiary or by any non-contractual obligation, other than by written licenses granted by the Company or any Subsidiary; the Company and the Subsidiaries have not received any written notice of any claim challenging the rights of the Company or its Subsidiaries in or to any Intellectual Property owned, licensed or optioned by the Company or any Subsidiary which claim would reasonably be expected to result in a Material Adverse Effect.

(x) Environmental Laws. The Company and the Subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "*Environmental Laws*"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses as described in the SEC Reports; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(y) Insurance. The Company and the Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as the Company and the Subsidiaries reasonably believe are adequate for the conduct of their business and as is customary for companies of similar size engaged in similar businesses in similar industries. The Company has no reason to believe that it or any of its Subsidiaries will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect. Neither of the Company nor any of its Subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(z) Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply with any applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission during the past 12 months. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Exchange Act Rules 13a-15 and 15d-15.

(aa) Disclosure Controls. The Company maintains systems of internal accounting controls designed to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii)

access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company is not aware of any material weaknesses in its internal control over financial reporting. Since the date of the latest audited financial statements of the Company included in its Annual Report on Form 10-K, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company and the Subsidiaries is made known to the certifying officers by others within those entities, particularly during the period in which the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "*Evaluation Date*"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the most recent Evaluation Date. Since the most recent Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Securities Act) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal controls. The Company's "internal controls over financial reporting" and "disclosure controls and procedures" are effective.

(bb) Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its Affiliates and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity (each, an "*Off Balance Sheet Transaction*") that could reasonably be expected to affect materially the Company's liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the Commission's Statement about Management's Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the SEC Reports which have not been described as required.

(cc) Labor Disputes. No labor disturbance by or dispute with employees of the Company or any Subsidiary exists or, to the knowledge of the Company, is threatened that would reasonably be expected to result in a Material Adverse Effect.

(dd) ERISA. To the knowledge of the Company, each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"), that is maintained, administered or contributed to by the Company or any of its Affiliates for employees or former employees of the Company and the Subsidiaries has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the "*Code*"); no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions.

(ee) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) (a "*Forward-Looking Statement*") contained in the SEC Reports has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith. The Forward-Looking Statements made in the Company's Annual Report on Form 10-K for the fiscal year most recently ended (i) except for any Forward-Looking Statement included in any financial statements and notes thereto, are within the coverage of the safe harbor for forward looking statements set forth in Section 27A of the Securities Act, Rule 175(b) under the Securities Act or Rule 3b-6 under the Exchange Act, as applicable, (ii) were made by the Company with a reasonable basis and in good faith and reflect the Company's good faith commercially reasonable best estimate of the matters described therein as of the respective dates on which such statements were made, and (iii) have been prepared in accordance with Item 10 of Regulation S-K under the Securities Act.

(ff) Margin Rules. Neither the issuance, sale and delivery of the Securities nor the application of the proceeds thereof by the Company will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

(gg) Broker/Dealer Relationships. Neither the Company nor any Subsidiary or any related entities (i) is required to register as a "broker" or "dealer" in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a "person associated with a member" or "associated person of a member" (within the meaning set forth in the FINRA Manual).

(hh) Fees. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company with respect to the offer and sale of the Securities.

(ii) Investment Company. Neither the Company nor any Subsidiary is or, after giving effect to the offering and sale of the Securities, will be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

(jj) Taxes. The Company and the Subsidiaries have filed all federal, state, local and foreign tax returns that have been required to be filed and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No tax deficiency has been determined adversely to the Company or any Subsidiary which has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company has no knowledge of any federal, state or other governmental tax deficiency, penalty or assessment which has been or might be asserted or threatened against it which could have a Material Adverse Effect.

(kk) No Improper Practices. (i) Neither the Company nor the Subsidiaries, nor to the Company's knowledge, any of their respective executive officers has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other Person charged with similar public or quasi-public duty in violation of any law or of the character required to be disclosed in the SEC Reports; (ii) no relationship, direct or indirect, exists between or among the Company or, to the Company's knowledge, the Subsidiaries or any Affiliate of any of them, on the one hand, and the directors, officers and stockholders of the Company or, to the Company's knowledge, the Subsidiaries, on the other hand, that is required by

the Securities Act to be described in the SEC Reports that is not so described; (iii) there are no material outstanding loans or advances or material guarantees of indebtedness by the Company or, to the Company's knowledge, the Subsidiaries to or for the benefit of any of their respective officers or directors or any of the members of the families of any of them; (iv) the Company has not offered, or caused any placement agent to offer, Common Shares to any Person with the intent to influence unlawfully (A) a customer or supplier of the Company or the Subsidiaries to alter the customer's or supplier's level or type of business with the Company or the Subsidiaries or (B) a trade journalist or publication to write or publish favorable information about the Company or the Subsidiaries or any of their respective products or services, and, (v) neither the Company nor the Subsidiaries nor, to the Company's knowledge, any employee or agent of the Company or the Subsidiaries has made any payment of funds of the Company or the Subsidiaries or received or retained any funds in violation of any law, rule or regulation (including, without limitation, the Foreign Corrupt Practices Act of 1977), which payment, receipt or retention of funds is of a character required to be disclosed in the SEC Reports.

(ll) Operations. The operations of the Company and the Subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions to which the Company or the Subsidiaries are subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "*Money Laundering Laws*"), except as would not reasonably be expected to result in a Material Adverse Effect; and no action, suit or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(mm) OFAC. Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or Person acting on behalf of the Company or any of its Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("*OFAC*"); and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any of its subsidiaries or any joint venture partner or other Person or entity, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

(nn) U.S. Real Property Holdings Corporation. The Company is not and has never been a U.S. real property holding corporation, within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(oo) Compliance Program. The Company has established and administers a compliance program applicable to the Company, to assist the Company and the directors, officers and employees of the Company in complying with applicable regulatory guidelines (including, without limitation, those administered by the FDA, the EMA, and any other foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA or EMA); except where such noncompliance would not reasonably be expected to have a Material Adverse Effect.

(pp) Clinical Studies. All animal and other preclinical studies and clinical trials currently being conducted by the Company or on behalf of the Company are, to the Company's knowledge, being conducted in all material respects in compliance with all Applicable Laws and in accordance with experimental protocols, procedures and controls generally used by qualified experts in the preclinical study and clinical trials of new drugs and biologics as applied to comparable products to those being developed by the Company, and to the Company's knowledge there are no other clinical trials

or preclinical studies, the results of which reasonably call into question the clinical trial or preclinical study results described or referred to in the SEC Reports when viewed in the context in which such results are described, except such results as would not reasonably be expected to result in a Material Adverse Effect; and the Company has not received any written notices or correspondence from the FDA, the EMA, or any other domestic or foreign governmental agency requiring the termination or suspension of any preclinical studies or clinical trials conducted by or on behalf of the Company that are described in the SEC Reports or the results of which are referred to in the SEC Reports.

(qq) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising as such terms are defined in Regulation D.

(rr) Compliance with Rule 506. None of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale is disqualified from relying on Rule 506 for any of the reasons stated in Rule 506(d) in connection with the issuance and sale of the Securities to the Purchasers pursuant to this Agreement. The Company has exercised reasonable care, including without limitation, conducting a factual inquiry that is appropriate in light of the circumstances, into whether any such disqualification under Rule 506(d) exists, but has assumed the accuracy of the Purchasers' representations and warranties. The Company has furnished to each Purchaser, a reasonable time prior to the date hereof, a description in writing of any matters that would have triggered disqualification under Rule 506(d), in compliance with the disclosure requirements of Rule 506(e). The Company has exercised reasonable care, including without limitation, conducting a factual inquiry that is appropriate in light of the circumstances, into whether any such disqualification under Rule 506(d) would have existed and whether any disclosure is required to be made to the Purchasers under Rule 506(e). Any outstanding securities of the Company (of any kind or nature) that were issued in reliance on Rule 506 have been issued in compliance with Rule 506(d) and (e) and no party has any reasonable basis for challenging any such reliance on Rule 506 in connection therewith.

(ss) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Principal Trading Market or the ASX.

(tt) Certain Market Activities. Neither the Company, nor any Subsidiary, nor any of their respective directors, officers or controlling Persons has taken, directly or indirectly, any action designed, or that has constituted or would reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(uu) Application of Takeover Protections. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate or articles of incorporation, or federal or state law that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under this Agreement, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities. The issuance and sale of the Securities to the Purchasers will not trigger any "change of control" or similar provision of any of the Company's material contracts, agreements or other arrangements.

(vv) Listing and Maintenance Requirements. The Common Shares were registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to the knowledge of the Company, is likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not received notice from the Principal Trading Market to the effect that the Company is not in compliance with the listing or maintenance requirements of the Principal Trading Market. The Company is, and has no reason to believe that it will not upon issuance of the Securities and for the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The issuance of the Securities hereunder does not contravene the rules of the Principal Trading Market or the ASX.

(ww) Use of Proceeds. The Company shall use the proceeds from the sale of the Securities for working capital purposes and to fund the launch of the Company's product candidates and products, including, but not limited to, any product candidates and products acquired in the Icon Acquisition.

3.2 Representations and Warranties of the Purchasers . Each Purchaser hereby, severally and not jointly, represents and warrants to, and agrees with the Company that as of the date of this Agreement and as of the Closing Date, unless such representation, warranty or agreement specifies a different date or time as follows:

(a) Organization; Authority. Such Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate or partnership power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by such Purchaser and performance by such Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate or, if such Purchaser is not a corporation, such partnership, limited liability company or other applicable similar action, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(b) No Conflicts. The execution, delivery and performance by such Purchaser of the Transaction Documents and the consummation by such Purchaser of the transactions contemplated hereby and thereby will not result in a violation of the organizational documents of such Purchaser.

(c) Investment Intent. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to, or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities laws, *provided, however*, that by making the representations herein, such Purchaser does not agree to hold any of the Securities for any minimum period of time and reserves the right, subject to the provisions of this Agreement and the Registration Rights Agreement, at all times to sell or otherwise dispose of all or any part of such Securities pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities laws. Such Purchaser is acquiring the Securities hereunder in the ordinary course of

its business. Such Purchaser does not presently have any agreement, plan or understanding, directly or indirectly, with any Person to distribute or effect any distribution of any of the Securities (or any securities which are derivatives thereof) to or through any Person or entity; such Purchaser is not a registered broker-dealer under Section 15 of the Exchange Act.

(d) Purchaser Status. Such Purchaser is, an "accredited investor" as defined in Rule 501(a) under the Securities Act. Such Purchaser hereby represents that neither it nor any of its Rule 506(d) Related Parties is a "bad actor" within the meaning of Rule 506(d) promulgated under the Securities Act. For purposes of this Agreement, "*Rule 506(d) Related Party*" shall mean a Person or entity covered by the "Bad Actor disqualification" provision of Rule 506(d) of the Securities Act.

(e) General Solicitation. Such Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general advertisement.

(f) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters such that it is capable of evaluating the merits and risks of the prospective investment in the Securities. Such Purchaser is able to bear the economic risk of an investment in the Securities and is able to afford a complete loss of such investment.

(g) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and the Subsidiaries and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser's right to rely on the truth, accuracy and completeness of the Disclosure Materials and the Company's representations and warranties contained in the Transaction Documents.

(h) Independent Investment Decision. Such Purchaser understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Purchaser in connection with the purchase of the Securities constitutes legal, tax, accounting or investment advice. Such Purchaser has consulted such legal, tax, accounting and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities.

(i) Reliance on Exemptions. Such Purchaser understands that the Securities being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire the Securities.

(j) Regulation M. Such Purchaser is aware that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of Common Shares and other activities with respect to the Common Shares by the Purchasers.

(k) Residency. Such Purchaser's residence (if an individual) or offices in which its investment decision with respect to the Securities was made (if an entity) are located at the address immediately below such Purchaser's name on its signature page hereto.

(l) Brokers and Finders. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company for any brokers or finders commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Purchaser.

ARTICLE IV
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) Compliance with Laws. Except as specifically provided for elsewhere in this Article IV, each Purchaser covenants that the Securities may be disposed of only pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act, or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with any applicable state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, (iii) pursuant to Rule 144 (*provided* that the Purchaser provides the Company with reasonable assurances (in the form of seller and, if applicable, broker representation letters) that the securities may be sold pursuant to such rule) or (iv) in connection with a bona fide pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company and the Transfer Agent, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act.

(b) Legends. Certificates evidencing the Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form, until such time as they are not required under Section 4.1(c):

> THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER THE SECURITIES ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge, and/or grant a security interest in, some or all of the legended Securities in connection with applicable securities laws, pursuant to a bona fide margin agreement in compliance with a bona fide margin

loan. Such a pledge would not be subject to approval or consent of the Company and no legal opinion of legal counsel to the pledgee, secured party or pledgor shall be required in connection with the pledge, but such legal opinion shall be required in connection with a subsequent transfer or foreclosure following default by the Purchaser transferee of the pledge. No notice shall be required of such pledge, but Purchaser's transferee shall promptly notify the Company of any such subsequent transfer or foreclosure. Each Purchaser acknowledges that the Company shall not be responsible for any pledges relating to, or the grant of any security interest in, any of the Securities or for any agreement, understanding or arrangement between any Purchaser and its pledgee or secured party. At the applicable Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder. Each Purchaser acknowledges and agrees that, except as otherwise provided in Section 4.1(c), any Securities subject to a pledge or security interest as contemplated by this Section 4.1(b) shall continue to bear the legend set forth in this Section 4.1(b) and be subject to the restrictions on transfer set forth in Section 4.1(a). Notwithstanding any provision in this Agreement to the contrary, each Purchaser shall comply with the Company's Securities Trading Policy to the extent that such policy is applicable to such Purchaser by its terms with respect to the prohibition under such policy on holding any securities of the Company in a margin account or otherwise pledging securities of the Company as collateral for a loan during any period of time that a Purchaser Designee, including the Initial Purchaser Designee, is a member of the Board of Directors.

(c) Removal of Legends.

(i) The legend set forth in Section 4.1(b) above shall be removed and the Company shall issue a certificate without such legend or any other legend to the holder of the applicable Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at the DTC, if (i) such Securities are registered for resale under the Securities Act pursuant to an effective registration statement, (ii) such Securities are sold or transferred pursuant to and in compliance with Rule 144, or (iii) such Securities are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such securities and without volume or manner-of-sale restrictions and are not being held by an Affiliate of the Company. Following the earlier of (i) the effective date of a Registration Statement or (ii) Rule 144 becoming available for the resale of the Securities, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Securities and without volume or manner-of-sale restrictions and the Securities are not held by an Affiliate of the Company, the Company shall cause Company Counsel to issue to the Transfer Agent the legal opinion referred to in the Irrevocable Transfer Agent Instructions. Any fees (with respect to the Transfer Agent, Company Counsel or otherwise) associated with the issuance of such opinion or the removal of such legend shall be borne by the Company. Following the date on which a Registration Statement is first declared effective by the Commission, or at such earlier time as a legend is no longer required for certain Securities in accordance with this Agreement, the Company will no later than two (2) Trading Days following the delivery by a Purchaser to the Company (with notice to the Company) of a legended certificate representing Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer), and an opinion of counsel to the extent required by Section 4.1(a), deliver or cause to be delivered to such Purchaser a certificate representing such Securities that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4.1(c). Certificates for Securities subject to legend removal hereunder may be transmitted by the Transfer Agent to the Purchasers by crediting the account of the Purchaser's prime broker with DTC as directed by such Purchaser.

(ii) The Company agrees that following such time as the legend is no longer required in accordance with this Agreement, it will, no later than two (2) Trading Days following the delivery by a Purchaser to the Transfer Agent of a (i) certificate representing Securities issued with a restrictive legend if such Securities are certificated, or (ii) written notice requesting the removal of any restrictive legend from the entry in the applicable balance account evidencing such Securities, as the case may be, deliver or cause to be delivered to such Purchaser such Securities, free from all restrictive and other legends, by crediting the account of the Purchaser's prime broker with DTC System as directed by such Purchaser. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Article IV.

(d) Irrevocable Transfer Agent Instructions. The Company shall issue the Irrevocable Transfer Agent Instructions to the Transfer Agent. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 4.1(d) (or instructions that are consistent therewith) will be given by the Company to the Transfer Agent in connection with this Agreement, and that the Securities shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement and the other Transaction Documents and applicable law. The Company acknowledges that a breach by it of its obligations under this Section 4.1(d) may cause irreparable harm to a Purchaser. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 4.1(d) may be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 4.1(d), that a Purchaser shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

(e) Transfer to Affiliates. Notwithstanding any other provision of this Article IV to the contrary, no registration statement or opinion of counsel shall be required for a transfer of the Securities by a Purchaser to an Affiliate of such Purchaser so long as the transferee of such Securities is an "accredited investor" and agrees to be subject to the terms hereof to the same extent as transferor in its capacity as a Purchaser herein.

4.2 Furnishing of Information. In order to enable the Purchasers to sell the Securities under Rule 144, until such time as no Purchaser holds Securities, the Company shall timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. During such twelve (12) month period, if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchasers and make publicly available in accordance with Rule 144(c) such information as is required for the Purchasers to sell the Securities under Rule 144.

4.3 Integration. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities to the Purchasers, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

4.4 Securities Laws Disclosure; Publicity. By 9:00 A.M., New York City time, on the Trading Day immediately following the date hereof, the Company shall issue a press release (the "*Press Release*"), reasonably acceptable to the Purchasers, disclosing all material terms of the transactions contemplated hereby. On or before 9:00 A.M., New York City time, on the second Trading Day

immediately following the execution of this Agreement, the Company will file a Current Report on Form 8-K with the Commission describing the terms of the Transaction Documents, the Icon Acquisition and the Debt Financing (and including as exhibits to such Current Report on Form 8-K the material Transaction Documents (including, without limitation, this Agreement and the Registration Rights Agreement)). Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser or an Affiliate of any Purchaser, or include the name of any Purchaser or an Affiliate of any Purchaser in any press release or filing with the Commission (other than the Registration Statement) or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, except (i) as required by federal securities law or the rules or regulations of the Trading Market, including in connection with (A) any registration statement contemplated by the Registration Rights Agreement and (B) the filing of final Transaction Documents (including signature pages thereto) with the Commission and (ii) to the extent such disclosure is required by law, request of the Staff of the Commission or Trading Market regulations, in which case the Company shall provide the Purchasers with two days prior written notice, if permitted under applicable law or the rules or regulation of the Trading Market of such disclosure permitted under this subclause (ii). From and after the issuance of the Press Release, no Purchaser shall be in possession of any material, non-public information received from the Company, any Subsidiary or any of their respective officers, directors, employees or agents, that is not disclosed in the Press Release unless a Purchaser shall have executed a written agreement regarding the confidentiality and use of such information. Each Purchaser, severally and not jointly with the other Purchasers covenants that until such time as the transactions contemplated by this Agreement are required to be publicly disclosed by the Company as described in this Section 4.4, such Purchaser will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

4.5 Indemnification of Purchasers.

(a) Subject to the provisions of this Section 4.5, the Company will indemnify and hold each Purchaser and its directors, officers, stockholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, stockholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling Persons (each, a "*Purchaser Party*") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against a Purchaser in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser (including any derivative action brought by any stockholder on behalf of the Company), with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser may have with any such stockholder or any violations by the Purchaser of state or federal securities laws or any conduct by such Purchaser which constitutes fraud, gross negligence, willful misconduct or malfeasance).

(b) Promptly after receipt by any Purchaser Party (the "*Indemnified Person*") of notice of any action, Proceeding or investigation in respect of which indemnity may be sought pursuant to this Section 4.5, such Indemnified Person shall promptly notify the Company in writing and the Company

shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Person, and shall assume the payment of all reasonable fees and expenses; *provided, however*, that the failure of any Indemnified Person so to notify the Company shall not relieve the Company of its obligations hereunder, except to the extent that the Company is actually and materially prejudiced by such failure to notify. In any such Proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless: (i) the Company and the Indemnified Person shall have mutually agreed to the retention of such counsel; (ii) the Company shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Person in such Proceeding; or (iii) in the reasonable judgment of counsel to such Indemnified Person, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel and local counsel and shall pay such fees and expenses as incurred. The Company shall not be liable to any Indemnified Person under this Agreement for any settlement of any Proceeding effected by the Indemnified Person without the Company's written consent, which consent shall not be unreasonably withheld, delayed or conditioned, *provided, however*, that if at any time an Indemnified Person shall have requested the Company to reimburse such Indemnified Person for fees and expenses of counsel as contemplated by this Section 4.5, and the Company has not reimbursed such Indemnified Party for such expenses within thirty (30) days, the Company agrees that it shall be liable for any settlement of any proceeding effected without its written consent. Without the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld, delayed or conditioned, the Company shall not effect any settlement, compromise, or consent to the entry of judgement in any pending or threatened action, suit or Proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement, compromise or consent includes an unconditional release of such Indemnified Person from any and all liability arising out of such Proceeding and does not include any statement as to or any findings of fault, culpability or failure to act by or on behalf of any Indemnified Person. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.6 Company as Indemnitor of First Resort. The Company hereby acknowledges that a Purchaser Party may have certain rights to indemnification, advancement of expenses or insurance, provided by Purchasers and certain of its affiliates (other than the Company and its subsidiaries, collectively, the "*Fund Indemnitors*"). In the event that any Purchaser Party is made a party to or a participant in any Proceeding, to the extent resulting from any claim based on a Purchaser Party's service to the Company as a director or other fiduciary of the Company, then the Company shall (i) be an indemnitor of first resort (i.e., its obligations to such Purchaser Party are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Purchaser Party are secondary), (ii) be required to advance reasonable expenses incurred by such Purchaser Party, and (iii) be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement, the Delaware General Corporation Law, and any provision of the Company's bylaws or Certificate of Incorporation, as amended (or any other agreement between the Company and Purchaser), without regard to any rights such Purchaser Party may have against the Fund Indemnitors. The Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Fund Indemnitors on behalf of a Purchaser Party with respect to any claim for which such Purchaser Party has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Purchaser Party against the Company. The Fund Indemnitors are third party beneficiaries of the terms of this Section 4.6.

4.7 Principal Trading Market Listing. In the time and manner required by the Principal Trading Market, the Company shall prepare and file with such Principal Trading Market an additional shares listing application covering all of the Securities and shall use its commercially reasonable efforts to take all steps necessary to cause all of the Securities to be approved for listing on the Principal Trading Market as promptly as possible thereafter. The Company shall comply with the rules and regulations of the ASX with respect to the issuance and sale of the Securities.

4.8 Form D; Blue Sky. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to the Purchasers. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Purchasers under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification) and shall provide evidence of such actions promptly upon the written request of any Purchaser.

4.9 Board Designee and Board Observer.

(a) Director Designation Rights. Subject to Nasdaq Listing Rule 5640 (the "*Voting Rights Rule*"), for so long as the Purchasers (and their Affiliates) beneficially own Common Shares, the Purchasers shall be entitled to designate for recommendation by the Governance and Nominating Committee of the Board of Directors pursuant to Section 4.9(c) and, upon such recommendation, nomination by the Board of Directors, one (1) director from time to time as set forth below (any individual designated by the Purchasers, the "*Purchaser Designee*"). For the avoidance of doubt, the Purchasers shall not be entitled to designate any Purchaser Designee pursuant to this Section 4.9(a) if at any time such designation would violate the Voting Rights Rule after consultation with Nasdaq. Notwithstanding the foregoing, each Purchaser Designee must be reasonably acceptable to the Governance and Nominating Committee of the Board of Directors and the Board of Directors. The Purchasers may not assign the rights set forth in this Section 4.9(a) without the prior written consent of the Company. In the event that Nasdaq informs the Company that it is not in compliance with the Voting Rights Rule as a result of the Purchaser's rights under this Section 4.9(a), the Purchaser shall cooperate with the Company to promptly remedy such non-compliance, including relinquishing its right to a Purchaser Designee hereunder.

(b) Initial Purchaser Designee. Immediately following the Closing, the Company shall appoint Ronald W. Eastman as the initial Purchaser Designee (the "*Initial Purchaser Designee*") to fill a vacancy on the Board of Directors with a term expiring at the Company's next annual meeting of stockholders.

(c) Compliance with Nominating Guidelines. Each Purchaser Designee, including the Initial Purchaser Designee, shall comply with the requirements of the charter for, and related guidelines of, the Governance and Nominating Committee of the Board of Directors.

(d) Additional Obligations. The Company agrees to take all necessary actions to cause (i) the individual designated in accordance with Section 4.9(a), and subject to the provisions of Section 4.9(c), to be included in the slate of nominees to be elected to the Board of Directors at the next annual or special meeting of stockholders of the Company at which directors are to be elected, in accordance with the Company's certificate of incorporation, bylaws and Delaware General Corporation Law, and at each annual meeting of stockholders of the Company thereafter at which such director's term expires, and to recommend that the Company's stockholders vote affirmatively for each such nominee

and (ii) the individual designated in accordance with Section 4.9(e) to fill the applicable vacancy of the Board of Directors, in accordance with the Company's certificate of incorporation, bylaws, Delaware General Corporation Law, all applicable securities laws and the Principal Trading Market's rules, regulations and standards.

(e) Vacancies of Purchaser Designee. In the event that a vacancy is created at any time by the death, disability, retirement, resignation or removal of the Purchaser Designee, the Company shall take at any time and from time to time all necessary action to cause the vacancy created thereby to be filled in accordance with the terms hereof as promptly as practicable by a new Purchaser Designee designated by the Purchasers to the Board of Directors seat that has become vacant.

(f) Waiver of Corporate Opportunities. In recognition that the Purchasers and Purchaser Designee currently have and will in the future have, or will consider, investments in numerous companies with respect to which Purchasers, Purchaser Designee or another Purchaser Party may serve as an advisor, a director or in some other capacity, and in recognition that Purchasers, Purchaser Designee and other Purchaser Parties have myriad duties to various investors and partners, and in anticipation that the Company and its Subsidiaries, on the one hand, and the Purchaser, Purchaser Designee and any other Purchaser Party, on the other hand, may engage in the same or similar activities or lines of business and have an interest in the same areas of corporate opportunities, and in recognition of the benefits to be derived by the Company hereunder and in recognition of the difficulties which may confront any advisor who desires and endeavors fully to satisfy such advisor's duties in determining the full scope of such duties in any particular situation, the provisions of this Section 4.9(f) are set forth to regulate, define and guide the conduct of certain affairs of the Company as they may involve the Purchasers, Purchaser Designee or Purchaser Party, and, except as the Purchasers and Purchaser Designee may otherwise agree in writing after the date hereof:

(i) the Purchasers, Purchaser Designee and any Purchaser Party will have the right: (A) to directly or indirectly engage in any business (including, without limitation, any business activities or lines of business that are the same as or similar to those pursued by, or competitive with, the Company and its Subsidiaries), (B) to directly or indirectly do business with any client or customer of the Company and its Subsidiaries, (C) to take any other action that the Purchaser, Purchaser Designee or Purchaser Party believes in good faith is necessary to or appropriate to fulfill its obligations as described in the first sentence of this Section 4.9(f) to third parties and (D) not to communicate or present potential transactions, matters or business opportunities to the Company or any of its Subsidiaries, and to pursue, directly or indirectly, any such opportunity for itself, and to direct any such opportunity to another Person or entity; and

(ii) the Purchaser, Purchaser Designee and any Purchaser Party will have no duty (contractual or otherwise) to communicate or present any corporate opportunities to the Company or any of its Affiliates or to refrain from any actions specified in the preceding paragraph, and the Company, on its own behalf and on behalf of its Affiliates, hereby renounces and waives any right to require the Purchaser, Purchaser Designee or any Purchaser Party to act in a manner inconsistent with the provisions of this Section 4.9(f).

(g) Benefits. During the period that a Purchaser Designee is a director of the Board of Directors, such director shall be entitled to the same benefits, including benefits under any director and officer indemnification or insurance policy maintained by the Company, as any other non-employee director of the Board of Directors.

(h) Board Observer. The Purchasers shall be entitled to designate one observer (the "*Purchaser Observer*") to the Board of Directors for so long as Purchaser (and its Affiliates) beneficially owns any Common Shares. The Purchaser Observer and the Company shall enter into a customary board

observer agreement providing for, among other things, the treatment of confidential information, indemnification, and reimbursement of expenses, reasonably acceptable to the Company and the Purchaser Observer. The Purchaser Observer shall be entitled to attend and participate, and shall be invited to attend and participate, at the Company's sole expense, in all meetings of the Board of Directors or committees of the Board of Directors (whether such meetings are in person, by telephone, or otherwise) in a non-voting capacity. The Company shall provide the Purchaser Observer copies of all notices, minutes, consents and other materials that it provides to the Board of Directors or any committees of the Board of Directors at the same time and in the same manner as such materials are provided to the Board of Directors and such committees. The Purchaser Observer is a non-voting observer and as such, the Company reserves the right to withhold all or part of any information or exclude access to any meeting or portion thereof if the Company reasonably believes that such withholding or exclusion is reasonably necessary to preserve the attorney-client privilege, to avoid conflicts of interest or for other similar reasons. The Purchasers may not assign the rights set forth in this Section 4.9(h) without the prior written consent of the Company. The initial Purchaser Observer shall be W. Brooks Andrews.

4.10 Company Lock-Up. During the period beginning from the date hereof and continuing to and including the earlier of (a) the date of the closing of the transactions contemplated by the Second Securities Purchase Agreement (the "*Additional Investment*") and (b) the date of the Company's first meeting of stockholders at which a proposal to approve the Additional Investment is not approved by the Company's stockholders (the "*Lock Up Period*"), the Company agrees that it will not offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose, except as provided hereunder, of any securities of the Company that are substantially similar to the Common Shares, including but not limited to any options or warrants to purchase Common Shares or any securities that are convertible into or exchangeable for, or that represent the right to receive, Common Shares or any such substantially similar securities; *provided*, *however*, that the Company may, without the consent of the Purchasers, (i) effect the transactions contemplated pursuant to this Agreement and the Second Securities Purchase Agreement; (ii) issue the SWK Warrant and the Common Shares issuable upon exercise thereof, (iii) issue Common Shares or options or stock units to purchase Common Shares, or issue Common Shares upon exercise of options or settlement of stock units, pursuant to any stock option, stock unit agreement, stock bonus, employee stock purchase or other stock plan or arrangement described in the SEC Reports; (iv) issue Common Shares pursuant to the conversion or exchange of convertible or exchangeable securities outstanding as of the date of this Agreement; (v) file a registration statement on Form S-8 to register Common Shares issuable pursuant to the terms of a stock option, stock bonus, employee stock purchase or other stock incentive plan or arrangement described in the SEC Reports; (vi) issue Common Shares in connection with any joint venture, commercial or collaborative relationship or the acquisition or license by the Company of the securities, businesses, property or other assets of another Person or entity which do not principally involve capital raising; provided, however, that in the case of clause (vi), such Common Shares shall not in the aggregate exceed 5% of the Company's outstanding Common Shares on a fully diluted basis after giving effect to the sale of the Securities contemplated by this Agreement; (vii) file the Registration Statement and the Second Registration Statement in connection with this Agreement and the Second Securities Purchase Agreement; and (viii) assist any stockholder of the Company in the establishment of a trading plan by such stockholder pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Common Shares, provided that such plan does not provide for the transfer of Common Shares during the Lock Up Period, and the establishment of such plan does not require or otherwise result in any public filings or other public announcement of such plan during such Lock Up Period and such plan is otherwise permitted to be implemented during the Lock Up Period pursuant to the terms of the Lock Up Agreement between such Person and the Purchasers, if any.

ARTICLE V
CONDITIONS PRECEDENT TO CLOSING

5.1 Conditions Precedent to the Obligations of the Purchasers to Purchase Securities . The obligation of each Purchaser to purchase Securities at the Closing is subject to the fulfillment to such Purchaser's satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by such Purchaser (as to itself only):

(a) Representations and Warranties. The representations and warranties of the Company contained herein shall be true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties shall be true and correct) as of the date when made and as of the Closing Date, as though made on and as of such date, except for such representations and warranties that speak as of a specific date.

(b) Performance. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing.

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(d) Consents. The Company shall have obtained in a timely fashion any and all consents, permits, approvals, registrations and waivers necessary for consummation of the purchase and sale of the Securities, all of which shall be and remain so long as necessary in full force and effect.

(e) Adverse Changes. Since the date of execution of this Agreement, no event or series of events shall have occurred that has had or would reasonably be expected to have a Material Adverse Effect.

(f) Listing. The Principal Trading Market shall have approved the listing of additional shares application for the Securities.

(g) No Suspensions of Trading in Common Shares. The Common Shares shall not have been suspended, as of the Closing Date, by the Commission or the Principal Trading Market from trading on the Principal Trading Market nor shall suspension by the Commission or the Principal Trading Market have been threatened, as of the Closing Date, either (i) in writing by the Commission or the Principal Trading Market or (ii) by falling below the minimum listing maintenance requirements of the Principal Trading Market.

(h) Icon Acquisition. The Company shall have entered into the Agreement and Plan of Merger for the Icon Acquisition and the conditions precedent to the consummation of the transactions thereunder shall have been satisfied and the Company shall have filed the Certificate of Merger.

(i) Debt Financing. The Company shall have entered into the Credit Agreement for the Debt Financing, containing terms and conditions approved by the Purchasers, provided, that such approval shall not be unreasonably withheld, conditioned or delayed.

(j) Lock-Up Agreements. The Company shall deliver lock-up agreements in the form attached as Exhibit F hereto executed by each of the Company's directors and executive officers which are in full force and effect as of the date hereof and shall be in full force and effect as of the Closing Date.

(k) Company Deliverables. The Company shall have delivered the Company Deliverables in accordance with Section 2.2(a).

(l) Termination. This Agreement shall not have been terminated as to such Purchaser in accordance with Section 6.17 herein.

5.2 Conditions Precedent to the Obligations of the Company to sell Securities. The Company's obligation to sell and issue the Securities at the Closing to the Purchasers is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions, any of which may be waived by the Company:

(a) Representations and Warranties. The representations and warranties made by the Purchasers in Section 3.2 hereof shall be true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties shall be true and correct) as of the date when made, and as of the Closing Date as though made on and as of such date, except for representations and warranties that speak as of a specific date.

(b) Performance. Such Purchaser shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by such Purchaser at or prior to the Closing Date.

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(d) Listing. The Principal Trading Market shall have approved the listing of additional shares application for the Securities.

(e) Termination. This Agreement shall not have been terminated as to such Purchaser in accordance with Section 6.17 herein.

(f) Purchasers Deliverables. Each Purchaser shall have delivered its Purchaser Deliverables in accordance with Section 2.2(b).

ARTICLE VI
MISCELLANEOUS

6.1 Fees and Expenses. The Company and the Purchasers shall each pay the fees and expenses of their respective advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party in connection with the negotiation, preparation, execution, delivery and performance of the Transaction Documents, the Second Securities Purchase Agreement and the Second Registration Rights Agreement; *provided, however*, that the Company shall reimburse the Purchasers for all reasonable fees and expenses of the Purchasers incurred by the Purchasers in connection with the Transaction Documents, the Second Securities Purchase Agreement and the Second Registration Rights Agreement and the transactions contemplated thereby, including fees and expenses related to due diligence, consultants, and the legal fees and expenses of counsel to the Purchasers in an amount not to exceed $400,000 in the aggregate, of which amount, up to $200,000 shall be payable on the Closing and up to $200,000 shall be payable upon the closing of the Additional Investment. The Company shall pay all Transfer Agent fees, stamp taxes and other taxes and duties levied in connection with the sale and issuance of the Securities to the Purchasers.

6.2 Entire Agreement . The Transaction Documents, together with the exhibits and schedules thereto, and the Second Securities Purchase Agreement and Second Registration Rights Agreement, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company and the Purchasers will execute and deliver to the other such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

6.3 Notices . Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via electronic mail or facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the e-mail address or facsimile number specified in this Section 6.3 prior to 5:00 P.M., New York City time, on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via electronic mail or facsimile at the email address or facsimile number specified in this Section 6.3 on a day that is not a Trading Day or later than 5:00 P.M., New York City time, on any Trading Day, (c) the Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service with next day delivery specified, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to the Company:
pSivida Corp.
480 Pleasant Street
Watertown, Massachusetts 02472
Telephone No.: (617) 916-5000
Facsimile No.: (617) 926-5050
Attention: John D. Mercer
Email: jmercer@psivida.com

With a copy to:
Hogan Lovells
1735 Market Street
23rd Floor
Philadelphia, PA 19103
Telephone No.: 267-675-4671
Facsimile No.: 267-675-4601
Attention: Steven J. Abrams
E-mail: steve.abrams@hoganlovells.com

If to a Purchaser:
To the address set forth under such Purchaser’s name on the signature page hereof; or such other address as may be designated in writing hereafter, in the same manner, by such Person.

With a copy to:

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022
Telephone No.: 212-549-0408
Facsimile No.: 212-521-5450
Attention: Mark G. Pedretti
E-mail: mpedretti@reedsmith.com

6.4 Amendments; Waivers; No Additional Consideration. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and each of the Purchasers, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

6.5 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any of the Transaction Documents.

6.6 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns. The Company may not assign this Agreement, or any of its rights or obligations hereunder, without the prior written consent of each Purchaser. Any Purchaser may assign its rights hereunder in whole or in part to any Person to whom such Purchaser assigns or transfers any Securities in compliance with the Transaction Documents and applicable law, provided such transferee shall agree in writing to be bound, with respect to the transferred Securities, by the terms and conditions of this Agreement that apply to the "Purchasers".

6.7 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.6.

6.8 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the New York Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained

herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

6.9 Survival. Subject to applicable statute of limitations, the representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery of the Securities.

6.10 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

6.11 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

6.12 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company and the Transfer Agent of such loss, theft or destruction and the execution by the holder thereof of a customary lost certificate affidavit of that fact and an agreement to indemnify and hold harmless the Company and the Transfer Agent for any losses in connection therewith or, if required by the Transfer Agent, a bond in such form and amount as is required by the Transfer Agent. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities. If a replacement certificate or instrument evidencing any Securities is requested due to a mutilation thereof, the Company may require delivery of such mutilated certificate or instrument as a condition precedent to any issuance of a replacement.

6.13 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Purchasers will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by the Purchasers by reason of any breach of obligations contained in this Agreement and hereby agree to waive and not assert in any action for specific performance of any such obligation (other than in connection with any action for a temporary restraining order) the defense that a remedy at law would be adequate.

6.14 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

6.15 Adjustments in Share Numbers and Prices. In the event of any stock split, subdivision, dividend or distribution payable in shares of Common Shares (or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly shares of Common Shares), combination or other similar recapitalization or event occurring after the date hereof and prior to the Closing, each reference in any Transaction Document to a number of shares or a price per share shall be deemed to be amended to appropriately account for such event.

6.16 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under any Transaction Document. The decision of each Purchaser to purchase Securities pursuant to the Transaction Documents has been made by such Purchaser independently of any other Purchaser and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company or any Subsidiary which may have been made or given by any other Purchaser or by any agent or employee of any other Purchaser, and no Purchaser and any of its agents or employees shall have any liability to any other Purchaser (or any other Person) relating to or arising from any such information, materials, statement or opinions. Nothing contained herein or in any Transaction Document, and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser acknowledges that no other Purchaser has acted as agent for such Purchaser in connection with making its investment hereunder and that no Purchaser will be acting as agent of such Purchaser in connection with monitoring its investment in the Securities or enforcing its rights under the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents.

6.17 Termination. This Agreement may be terminated and the sale and purchase of the Securities abandoned at any time prior to the Closing by either the Company or any Purchaser (with respect to itself only) upon written notice to the other, if the Closing has not been consummated on or prior to 5:00 P.M., New York City time, on April 30, 2018. Nothing in this Section 6.17 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents. In the event of a termination pursuant to this Section 6.17, the Company shall promptly notify all non-terminating Purchasers. Upon a termination in accordance with this Section 6.17, the Company and the terminating Purchaser(s) shall not have any further obligation or liability (including arising from such termination) to the other, except as provided in Section 4.5, Section 4.6, and Section 6.1 and no Purchaser will have any liability to any other Purchaser under the Transaction Documents or Second Securities Purchase Agreement as a result therefrom.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

COMPANY:

pSivida Corp.

By: /s/ Nancy Lurker
Name: Nancy Lurker
Title: President and Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

NAME OF PURCHASER:

EW Healthcare Partners L.P.

By: Essex Woodlands Fund IX-GP, L.P.
Its: General Partner

By: Essex Woodlands IX, LLC
Its: General Partner

By: /s/ Ronald W. Eastman
Name: Ronald W. Eastman
Title: Manager

Aggregate Purchase Price (Subscription Amount): $9,100,807.10

Number of Securities to be Acquired: 8,273,461

Tax ID No.: *[separately provided]*

Address for Notice:

21 Waterway Avenue, Suite 225
The Woodlands, TX 77380

Telephone No.:	(281) 364-1555
Facsimile No.:	(281) 364-9755
E-mail Address:	rkolodziejcyk@ewhv.com
Attention:	Richard Kolodziejcyk, Chief Financial Officer

Delivery Instructions (if different than above):

c/o _____

Street: _____

City/State/Zip: _____

Attention: _____

Telephone No.: _____

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

NAME OF PURCHASER:

EW Healthcare Partners-A L.P.

By: Essex Woodlands Fund IX-GP, L.P.
Its: General Partner

By: Essex Woodlands IX, LLC
Its: General Partner

By: /s/ Ronald W. Eastman
Name: Ronald W. Eastman
Title: Manager

Aggregate Purchase Price (Subscription Amount): $366,149.30

Number of Securities to be Acquired: 332,863

Tax ID No.: *[separately provided]*

Address for Notice:

21 Waterway Avenue, Suite 225
The Woodlands, TX 77380

Telephone No.:	(281) 364-1555
Facsimile No.:	(281) 364-9755
E-mail Address:	rkolodziejcyk@ewhv.com
Attention:	Richard Kolodziejcyk, Chief Financial Officer

Delivery Instructions (if different than above):

c/o _____

Street: _____

City/State/Zip: _____

Attention: _____

Telephone No.: _____

Schedule 3.1(h)

1. pSivida US, Inc.
2. pSiMedica Limited
3. pSivida Securities Corporation
4. Icon Bioscience, Inc. (as of the effective time of the Icon Acquisition)

Schedule 3.1(k)

Common Stock (as of March 28, 2018):

120,000,000 shares authorized

45,303,593 shares issued and outstanding

Preferred Stock (as of March 28, 2018):

5,000,000 shares authorized

No shares issued and outstanding

EXHIBITS:

A: Form of Registration Rights Agreement
B: Form of Irrevocable Transfer Agent Instructions
C: Form of Secretary's Certificate
D: Form of Officer's Certificate
E: Accredited Investor Questionnaire
F: Form of Lock-up Agreement

EXHIBIT A

FORM OF REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (as it may be amended from time to time in accordance with the terms hereof, the "Agreement"), dated as of March __, 2018, is made by and among pSivida Corp., a Delaware corporation (the "Company") and EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. (together with their Permitted Transferees that become party hereto, the "Investors").

RECITALS

WHEREAS, pursuant to the Securities Purchase Agreement dated as of the date hereof, by and among the Company and the Investors (the "Securities Purchase Agreement"), the Company will issue and sell to the Investors an aggregate of _____ shares of the Company's common stock, par value $0.001 per share (the "Securities").

WHEREAS, the execution and delivery of this Agreement by the Company is a condition precedent to closing of the purchase of the Securities by the Investors.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

EFFECTIVENESS

Section 1.1 Effectiveness. This Agreement shall become effective upon the closing of the purchase of the Securities by the Investors pursuant to the Securities Purchase Agreement.

ARTICLE 2

DEFINITIONS

Section 2.1 Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Adverse Disclosure" means public disclosure of material non-public information that, in the good faith judgment of the board of directors of the Company: (i) would be required to be made in any Registration Statement filed with the SEC by the Company so that such Registration Statement, from and after its effective date, does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such Registration Statement; and (iii) the Company has a bona fide business purpose for not disclosing publicly.

"Affiliate" means, with respect to any specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person or (b) in the event that the specified Person is a natural Person, a Member of the Immediate Family of such Person; provided that the Company and each

of its subsidiaries shall be deemed not to be Affiliates of any Investor. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning set forth in the preamble.

"Business Day" means any day except Saturday, Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Common Stock" means the common stock of the Company, par value $0.001 per share.

"Company" has the meaning set forth in the preamble.

"Credit Agreement" means that certain Credit Agreement, dated as of March [•], 2018, among the Company, SWK Funding LLC, as agent, sole lead arranger and sole bookrunner, and the financial institutions party thereto from time to time as lenders.

"Debt Financing" means the transactions contemplated by the Credit Agreement.

"Demand Registration" shall have the meaning set forth in Section 3.1.1(a).

"Demand Registration Request" shall have the meaning set forth in Section 3.1.1(a).

"Demand Registration Statement" shall have the meaning set forth in Section 3.1.1(c).

"Demand Suspension" shall have the meaning set forth in Section 3.1.5.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"FINRA" means the Financial Industry Regulatory Authority.

"Investors" has the meaning set forth in the preamble.

"Issuer Free Writing Prospectus" means an issuer free writing prospectus, as defined in Rule 433 under the Securities Act, relating to an offer of the Registrable Securities.

"Loss" shall have the meaning set forth in Section 3.9.1.

"Member of the Immediate Family" means, with respect to any Person who is an individual, (a) each parent, spouse (but not including a former spouse or a spouse from whom such Person is legally separated) or child (including those adopted) of such individual and (b) each trustee, solely in his or her capacity as trustee, for a trust naming only one or more of the Persons listed in sub-clause (a) as beneficiaries.

"Permitted Transferee" means any Affiliate of any Investor.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Piggyback Notice" shall have the meaning set forth in Section 3.3.1.

"Piggyback Registration" shall have the meaning set forth in Section 3.3.1.

"Prospectus" means (i) the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments and supplements, and all other material incorporated by reference in such prospectus, and (ii) any Issuer Free Writing Prospectus.

"Public Offering" means the offer and sale of the Company's equity securities for cash pursuant to an effective Registration Statement under the Securities Act (other than a Registration Statement on Form S-4 or Form S-8 or any successor form).

"Registrable Securities" means (i) all shares of Common Stock held by the Investors, (ii) all shares of Common Stock issuable upon exercise, conversion or exchange of any option, warrant or convertible security not then subject to vesting or forfeiture to the Company and (iii) all shares of Common Stock directly or indirectly issued or then issuable with respect to the securities referred to in clauses (i) or (ii) above by way of a stock dividend or stock split, or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (w) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such Registration Statement, (x) such securities shall have been Transferred pursuant to Rule 144, (y) such holder is able to immediately sell such securities under Rule 144 without any restrictions on transfer (including without application of paragraphs (c), (d), (e), (f) and (h) of Rule 144), as reasonably determined by the Investor, or (z) such securities shall have ceased to be outstanding.

"Registration" means registration under the Securities Act of the offer and sale to the public of any Registrable Securities under a Registration Statement. The terms "register", "registered" and "registering" shall have correlative meanings.

"Registration Expenses" shall have the meaning set forth in Section 3.8.

"Registration Statement" means any registration statement of the Company filed with, or to be filed with, the SEC under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement other than a registration statement (and related Prospectus) filed on Form S-4 or Form S-8 or any successor form thereto.

"Representatives" means, with respect to any Person, any of such Person's officers, directors, employees, agents, attorneys, accountants, actuaries, consultants, equity financing partners or financial advisors or other Person associated with, or acting on behalf of, such Person.

"Rule 144" means Rule 144 under the Securities Act (or any successor rule).

"SEC" means the Securities and Exchange Commission or any successor agency having jurisdiction under the Securities Act.

"Securities" has the meaning set forth in the recitals.

"Securities Purchase Agreement" has the meaning set forth in the recitals.

"Second Securities Purchase Agreement" means that certain securities purchase agreement by and among the Company and the investors signatory thereto dated as of the date hereof.

"Securities Act" means the Securities Act of 1933, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"Selling Stockholder Information" shall have the meaning set forth in Section 3.9.1.

"Shelf Period" shall have the meaning set forth in Section 3.2.2.

"Shelf Registration" shall have the meaning set forth in Section 3.2.1(a).

"Shelf Registration Request" shall have the meaning set forth in Section 3.2.1(a).

"Shelf Registration Statement" shall have the meaning set forth in Section 3.2.1(a).

"Shelf Suspension" shall have the meaning set forth in Section 3.2.3.

"Shelf Takedown Request" shall have the meaning set forth in Section 3.2.4(a).

"SWK Warrants" means the warrants to purchase shares of Common Stock issued in connection with the Debt Financing.

"Transfer" means, with respect to any Registrable Security, any interest therein, or any other securities or equity interests relating thereto, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation or other encumbrance or other disposition thereof, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise. "Transferred" shall have a correlative meaning.

"Underwritten Public Offering" means an underwritten Public Offering, including any bought deal or block sale to a financial institution conducted as an underwritten Public Offering.

"Underwritten Shelf Takedown" means an Underwritten Public Offering pursuant to an effective Shelf Registration Statement.

"WKSI" means any Securities Act registrant that is a well-known seasoned issuer as defined in Rule 405 under the Securities Act at the most recent eligibility determination date specified in paragraph (2) of that definition.

Section 2.2 Other Interpretive Provisions. (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "hereof", "herein", "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and any subsection and section references are to this Agreement unless otherwise specified.

(c) The term "including" is not limiting and means "including without limitation."

(d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(e) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

ARTICLE 3

REGISTRATION RIGHTS

The Company will perform and comply, and cause each of its subsidiaries to perform and comply, with such of the following provisions as are applicable to it. Each Investor will perform and comply with such of the following provisions as are applicable to such Investor.

Section 3.1 Demand Registration.

Section 3.1.1 Request for Demand Registration.

(a) At any time, but subject to the net proceeds limitations in Section 3.1.1(b), the Investors shall have the right to make a written request from time to time (a "Demand Registration Request") to the Company for Registration of all or part of the Registrable Securities held by such Investors and any other Investor. Any such Registration pursuant to a Demand Registration Request shall hereinafter be referred to as a "Demand Registration."

(b) Each Demand Registration Request shall specify (x) the kind and aggregate amount of Registrable Securities to be registered, provided that the anticipated net proceeds from the Registrable Securities to be registered by all Investors must be at least $5,000,000, and (y) the intended method or methods of disposition thereof.

(c) Upon receipt of a Demand Registration Request, the Company shall as promptly as practicable file a Registration Statement (a "Demand Registration Statement") relating to such Demand Registration, and use its commercially reasonable efforts to cause such Demand Registration Statement to be promptly declared effective under the Securities Act.

Section 3.1.2 Limitation on Demand Registrations. The Company shall not be obligated to take any action to effect any Demand Registration if a Demand Registration was declared effective, the Investors withdraw their request pursuant to Section 3.1.3 or an Underwritten Shelf Takedown requested by the Investors was consummated within the preceding ninety (90) days.

Section 3.1.3 Demand Withdrawal. The Investors may withdraw all or any portion of their Registrable Securities included in a Demand Registration from such Demand Registration at any time prior to the effectiveness of the applicable Demand Registration Statement. Upon receipt of a notice to such effect from the Investor or Investors holding an aggregate of at least a majority in interest of the then outstanding Registrable Securities with respect to all of their Registrable Securities included in such Demand Registration, the Company shall cease all efforts to secure effectiveness of the applicable Demand Registration Statement.

Section 3.1.4 Effective Registration. The Company shall use commercially reasonable efforts to cause the Demand Registration Statement to become effective and remain effective for not less than one hundred eighty (180) days (or such shorter period as will terminate when all Registrable Securities covered by such Demand Registration Statement have been sold or withdrawn), or, if such Demand Registration Statement relates to an Underwritten Public Offering, such longer period as in the opinion of counsel for the underwriter or underwriters a Prospectus is required by law to be delivered in connection with sales of Registrable Securities by an underwriter or dealer.

Section 3.1.5 Delay in Filing; Suspension of Registration. If the filing, initial effectiveness or continued use of a Demand Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Investors, delay the filing or initial effectiveness of, or suspend use of, the Demand Registration Statement (a "Demand Suspension"); provided, however, that the Company shall not be permitted to exercise a Demand Suspension more than once during any twelve (12)-month period for a period not to exceed sixty (60) days. In the case of a Demand Suspension, the Investors shall suspend use of the applicable Prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Investors in writing upon the termination of any Demand Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the Investors such numbers of copies of the Prospectus as so amended or supplemented as the Investors may reasonably request. The Company shall, if necessary, supplement or amend the Demand Registration Statement, if required by the registration form used by the Company for the Demand Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Investor.

Section 3.2 Shelf Registration.

Section 3.2.1 Request for Shelf Registration.

(a) At any time, upon the written request of the Investors (a "Shelf Registration Request"), the Company shall within thirty (30) days of the date of such request, file with the SEC a shelf Registration Statement pursuant to Rule 415 under the Securities Act ("Shelf Registration Statement") relating to the offer and sale of Registrable Securities held by the Investors from time to time in accordance with the methods of distribution elected by the Investors, and the Company shall use its commercially reasonable efforts to cause such Shelf Registration Statement to promptly become effective under the Securities Act, but in no event later than sixty (60) days after filing such Shelf Registration Statement. Any such Registration pursuant to a Shelf Registration Request shall hereinafter be referred to as a "Shelf Registration."

(b) If on the date of the Shelf Registration Request the Company is not a WKSI, then the Shelf Registration Request shall specify the aggregate amount of Registrable Securities to be registered, which shall not be less than a majority of the Registrable Securities then held by the Investors. The Company shall provide to the Investors the information necessary to determine the Company's status as a WKSI upon request.

Section 3.2.2 Continued Effectiveness. The Company shall use its commercially reasonable efforts to keep such Shelf Registration Statement continuously effective under the Securities Act in order to permit the Prospectus forming part of the Shelf Registration Statement to be usable by an Investor until the earlier of: (i) the date as of which all Registrable Securities have been sold pursuant to the Shelf Registration Statement or another Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder); and (ii) the date as of which the Investors no longer hold Registrable Securities (such period of effectiveness, the "Shelf Period"). Subject to Section 3.2.4, the Company shall be deemed not to have used its commercially reasonable efforts to keep the Shelf Registration Statement effective during the Shelf Period if the Company voluntarily takes any action or omits to take any action that would result in the Investors not being able to offer and sell any Registrable Securities pursuant to such Shelf Registration Statement during the Shelf Period, unless such action or omission is required by applicable law.

Section 3.2.3 Suspension of Registration. If the continued use of such Shelf Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Investors, suspend use of the Shelf Registration Statement (a "Shelf Suspension"); provided, however, that the Company shall not be permitted to exercise a Shelf Suspension more than one time during any twelve (12)-month period for a period not to exceed sixty (60) days. In the case of a Shelf Suspension, the Investors agree to suspend use of the applicable Prospectus in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Investors in writing upon the termination of any Shelf Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the Investors such numbers of copies of the Prospectus as so amended or supplemented as the Investors may reasonably request. The Company shall, if necessary, supplement or amend the Shelf Registration

Statement, if required by the registration form used by the Company for the Shelf Registration Statement or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Investors.

Section 3.2.4 Shelf Takedown.

(a) At any time the Company has an effective Shelf Registration Statement with respect to the Investors' Registrable Securities, by notice to the Company specifying the intended method or methods of disposition thereof, the Investors may make a written request (a "Shelf Takedown Request") to the Company to effect a Public Offering, including an Underwritten Shelf Takedown, of all or a portion of the Investors' Registrable Securities that may be registered under such Shelf Registration Statement, and as soon as practicable the Company shall amend or supplement the Shelf Registration Statement as necessary for such purpose.

(b) All determinations as to whether to complete any Underwritten Shelf Takedown and as to the timing, manner, price and other terms of any Underwritten Shelf Takedown contemplated by this Section 3.2.4 shall be determined by the Investors.

(c) The Company shall not be obligated to take any action to effect any Underwritten Shelf Takedown if (x) the anticipated net proceeds from the Registrable Securities to be sold are not at least $5,000,000, or (y) a Demand Registration was declared effective or an Underwritten Shelf Takedown requested by the Investors was consummated within the preceding ninety (90) days.

Section 3.3 Piggyback Registration.

Section 3.3.1 Participation. If the Company at any time proposes to file a Registration Statement under the Securities Act or to conduct a Public Offering under an effective Shelf Registration Statement with respect to any offering of its equity securities for its own account or for the account of any other Persons (other than (i) a Registration under Sections 3.1 or 3.2, (ii) a Registration on Form S-4 or Form S-8 or any successor form to such forms or (iii) a Registration of securities solely relating to an offering and sale to employees or directors of the Company or its subsidiaries pursuant to any employee stock plan or other employee benefit plan arrangement), then, as soon as practicable (but in no event less than ten (10) Business Days prior to the proposed date of filing of such Registration Statement or, in the case of a Public Offering under a Shelf Registration Statement, the anticipated pricing or trade date), the Company shall give written notice (a "Piggyback Notice") of such proposed filing or Public Offering to the Investors, and such Piggyback Notice shall offer the Investors the opportunity to register under such Registration Statement such number of Registrable Securities as the Investors may request in writing, or to sell in such Public Offering up to such number of Registrable Securities that are included in the Shelf Registration Statement for such Public Offering or under a Shelf Registration Statement filed pursuant to Section 3.2, (a "Piggyback Registration"). The Investors must notify the Company of the number of Registrable Securities that they are requesting to be included in the Registration Statement within five (5) Business Days after receipt by the Investor of the Piggyback Notice. Subject to Section 3.3.2, the Company shall

include in such Registration Statement or in such Public Offering as applicable, all such Registrable Securities that are requested to be included therein within five (5) Business Days after receipt by the Investor of any such Piggyback Notice; provided, however, that if at any time after giving written notice of its intention to register or sell any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, or the pricing or trade date of a Public Offering under a Shelf Registration Statement, the Company determines for any reason not to register or sell or to delay the Registration or sale of such securities, the Company shall give written notice of such determination to the Investors and, thereupon, (i) in the case of a determination not to register or sell, shall be relieved of its obligation to register or sell any Registrable Securities in connection with such Registration or Public Offering (but not from its obligation to pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of any Investor to request that such Registration or sale be effected as a Demand Registration under Section 3.1 or an Underwritten Shelf Takedown under Section 3.2, as the case may be, and (ii) in the case of a determination to delay Registration or sale, in the absence of a request for a Demand Registration or an Underwritten Shelf Takedown, as the case may be, shall be permitted to delay registering or selling any Registrable Securities, for the same period as the delay in registering or selling such other securities as reasonably determined by the Company. The Investors shall have the right to withdraw all or part of their request for inclusion of its Registrable Securities in a Piggyback Registration by giving written notice to the Company of its request to withdraw.

Section 3.3.2 Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed offering of Registrable Securities included in a Piggyback Registration informs the Company and the Investors in writing that, in its or their opinion, the aggregate number of securities that the Investors and any other Persons intend to include in such offering exceeds the number that can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Registration shall be (i) first, one hundred percent (100%) of the securities that the Company proposes to sell, and (ii) second, and only if all the securities referred to in clause (i) have been included, the number of the Investors' Registrable Securities and the registrable securities of any Person included in such Piggyback Registration pursuant to the registration rights related to the Second Securities Purchase Agreement on a pro rata basis that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect and (iii) third, and only if all of the Registrable Securities referred to in clause (ii) have been included in such Registration, any other securities eligible for inclusion in such Registration.

Section 3.3.3 No Effect on Other Registrations. No Registration of Registrable Securities effected pursuant to a request under this Section 3.3 shall be deemed to have been effected pursuant to Sections 3.1 and 3.2 or shall relieve the Company of its obligations under Sections 3.1 and 3.2.

Section 3.4 Lock-Up Agreements. In connection with each Registration or sale of Registrable Securities pursuant to Section 3.1, 3.2 or 3.3 conducted as an Underwritten Public Offering, the Company agrees to cause its directors and executive officers, if requested by the underwriters in any such Underwritten Public Offering, to become bound by and to execute and deliver a customary lock-up agreement with the underwriter(s) of such Underwritten Public

Offering relating to the transfer of any equity securities of the Company held by such Person during the period commencing on the date of the final Prospectus relating to the Underwritten Public Offering and ending on the date specified by the underwriters (such period not to exceed ninety (90) days plus such additional period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on the publication or other distribution of research reports and analyst recommendations and opinions, if applicable).

Section 3.5 Registration Procedures.

Section 3.5.1 Requirements. In connection with the Company's obligations under Sections 3.1 through 3.4, the Company shall use its commercially reasonable efforts to effect such Registration and to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith the Company shall:

(a) As promptly as practicable prepare the required Registration Statement, including all exhibits and financial statements required under the Securities Act to be filed therewith and Prospectus, and, before filing a Registration Statement or Prospectus or any amendments or supplements thereto, (x) furnish to the underwriters, if any, and to the Investors, copies of all documents prepared to be filed, which documents shall be subject to the review of such underwriters and the Investors and their respective counsel, (y) make such changes in such documents concerning an Investor prior to the filing thereof as such Investor, or its counsel, may reasonably request and (z) except in the case of a Registration under Section 3.3 not file any Registration Statement or Prospectus or amendments or supplements thereto to which the Investors, in such capacity, or the underwriters, if any, shall reasonably object;

(b) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and supplements to the Prospectus as may be (x) reasonably requested by the Investors with Registrable Securities covered by such Registration Statement, (y) reasonably requested by any Investor (to the extent such request relates to information relating to such Investor), or (z) necessary to keep such Registration Statement effective for the period of time required by this Agreement, and comply with provisions of the applicable securities laws with respect to the sale or other disposition of all securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(c) notify the Investors and the managing underwriter or underwriters, if any, and (if requested) confirm such notice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Company (a) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, and when the applicable Prospectus or any amendment or supplement thereto has been filed, (b) of any written comments by the SEC, or any request by the SEC or other federal or state governmental authority for amendments or supplements to such Registration Statement or such Prospectus, or for additional information (whether before or after the effective date of the Registration Statement) or any other correspondence with the SEC relating to, or which may affect, the Registration, (c) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or any order by the SEC or any other regulatory

authority preventing or suspending the use of any preliminary or final Prospectus or the initiation or threatening of any proceedings for such purposes, (d) if, at any time, the representations and warranties of the Company in any applicable underwriting agreement cease to be true and correct in all material respects and (e) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(d) promptly notify the Investors and the managing underwriter or underwriters, if any, when the Company becomes aware of the happening of any event as a result of which the applicable Registration Statement or the Prospectus included in such Registration Statement (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus or any preliminary Prospectus, in light of the circumstances under which they were made) not misleading, when any Issuer Free Writing Prospectus includes information that may conflict with the information contained in the Registration Statement, or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement or Prospectus in order to comply with the Securities Act and, as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the Investors and the managing underwriter or underwriters, if any, an amendment or supplement to such Registration Statement or Prospectus, which shall correct such misstatement or omission or effect such compliance;

(e) to the extent the Company is eligible under the relevant provisions of Rule 430B under the Securities Act, if the Company files any Shelf Registration Statement, the Company shall include in such Shelf Registration Statement such disclosures as may be required by Rule 430B under the Securities Act (referring to the unnamed selling security holders in a generic manner) in order to ensure that any Investor may be added to such Shelf Registration Statement at a later time through the filing of a Prospectus supplement rather than a post-effective amendment;

(f) use its commercially reasonable efforts to prevent, or obtain the withdrawal of, any stop order or other order or notice preventing or suspending the use of any preliminary or final Prospectus;

(g) promptly incorporate in a Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment such information as the managing underwriter or underwriters, if any, and Investors agree should be included therein relating to the plan of distribution with respect to such Registrable Securities; and make all required filings of such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment;

(h) furnish to the Investors and each underwriter, if any, without charge, as many conformed copies as the Investors or such underwriter may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment or supplement thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(i) deliver to the Investors and each underwriter, if any, without charge, as many copies of the applicable Prospectus (including each preliminary Prospectus) and any amendment or supplement thereto and such other documents as the Investors or such underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities by the Investors or underwriter (it being understood that the Company shall consent to the use of such Prospectus or any amendment or supplement thereto by the Investors and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto);

(j) on or prior to the date on which the applicable Registration Statement becomes effective, use its commercially reasonable efforts to register or qualify, and cooperate with the Investors, the managing underwriter or underwriters, if any, and their respective counsel, in connection with the Registration or qualification of such Registrable Securities for offer and sale under the securities or "Blue Sky" laws of each state and other jurisdiction as any Investor or managing underwriter or underwriters, if any, or their respective counsel reasonably request in writing and do any and all other acts or things reasonably necessary or advisable to keep such Registration or qualification in effect for such period as required by Section 3.1 or Section 3.2, as applicable, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(k) cooperate with the Investors and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request prior to any sale of Registrable Securities to the underwriters;

(l) use its commercially reasonable efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Securities;

(m) make such representations and warranties to the Investors, and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in public offerings similar to the offering then being undertaken;

(n) enter into such customary agreements (including underwriting and indemnification agreements) and take all such other actions as the Investors or the managing underwriter or underwriters, if any, reasonably request in order to expedite or facilitate the Registration and disposition of such Registrable Securities;

(o) obtain for delivery to the Investors and to the underwriter or underwriters, if any, an opinion or opinions from counsel for the Company dated the most recent effective date of the Registration Statement or, in the event of an Underwritten Public Offering, the date of the closing under the underwriting agreement, in customary form, scope and substance, which opinions shall be reasonably satisfactory to the Investors or underwriters, as the case may be, and their respective counsel;

(p) in the case of an Underwritten Public Offering, obtain for delivery to the Company and the managing underwriter or underwriters, with copies to the Investors included in such Registration or sale, a comfort letter from the Company's independent registered public accounting firm (and, if necessary, any other independent registered public accounting firm of any subsidiary of the Company or any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement) in customary form and covering such matters of the type customarily covered by comfort letters as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(q) cooperate with each Investor selling Registrable Securities and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(r) use its commercially reasonable efforts to comply with all applicable securities laws and, if a Registration Statement was filed, make available to its security holders, as soon as reasonably practicable, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(s) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement;

(t) use its commercially reasonable efforts to cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of the Company's equity securities are then listed or quoted and on the Principal Trading Market;

(u) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by a representative appointed by the Investors, by any underwriter participating in any disposition to be effected pursuant to such Registration Statement and by any attorney, auditor or other agent retained by the Investors or any such underwriter, all pertinent financial and other records and pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees and the Company's independent registered public accounting firm which has certified its financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such Person in connection with such Registration Statement;

(v) in the case of an Underwritten Public Offering, cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters in any such offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto;

(w) take no direct or indirect action prohibited by Regulation M under the Exchange Act;

(x) take all reasonable action to ensure that any Issuer Free Writing Prospectus utilized in connection with any Registration complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related Prospectus, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(y) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities in accordance with the terms of this Agreement.

Section 3.5.2 Company Information Requests. The Company may require the Investors to furnish to the Company such information regarding the distribution of such securities and such other information relating to the Investors and their ownership of Registrable Securities as the Company may from time to time reasonably request in writing and the Company may exclude from such Registration or sale the Registrable Securities of each Investor who unreasonably fails to furnish such information within a reasonable time after receiving such request. Each Investor shall furnish such information to the Company and to cooperate with the Company as reasonably necessary to enable the Company to comply with the provisions of this Agreement.

Section 3.6 Underwritten Offerings.

Section 3.6.1 Shelf and Demand Registrations. If requested by the underwriters for any Underwritten Public Offering, pursuant to a registration or sale under Sections 3.1 or 3.2, the Company shall enter into an underwriting agreement with such underwriters, such agreement to be reasonably satisfactory in substance and form to each of the Company, the Investors and the underwriters, and to contain such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type, including indemnities no less favorable to the recipient thereof than those provided in Section 3.9 of this Agreement. Each Investor shall cooperate with the Company in the negotiation of the underwriting agreement and shall give consideration to the reasonable suggestions of the Company regarding the form thereof, and each Investor shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. No Investor shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Investor’s title to the Registrable Securities, intended method of distribution and any other representations to be made by such Investor as are generally prevailing in agreements of that type, and the aggregate amount of the liability of any Investor under such agreement shall not exceed such Investor’s proceeds from the sale of their Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

Section 3.6.2 Piggyback Registrations. If the Company proposes to register or sell any of its securities under the Securities Act as contemplated by Section 3.3 and such securities are to be distributed through one or more underwriters, the Company shall, if requested by the Investors pursuant to Section 3.3 and, subject to the provisions of Section 3.3.2, use its commercially reasonable efforts to arrange for such underwriters to include on the same terms and conditions that apply to the other sellers in such Registration or sale all the Registrable Securities to be offered and sold by such Investors among the securities of the Company to be distributed by such underwriters in such Registration or sale. The Investors shall be party to the underwriting agreement between the Company and such underwriters and shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. No Investor shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Investor's title to the Registrable Securities, intended method of distribution and any other representations to be made by such Investor as are generally prevailing in agreements of that type, and the aggregate amount of the liability of any Investor shall not exceed such Investor's proceeds from the sale of its Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

Section 3.6.3 Selection of Underwriters; Selection of Counsel. In the case of an Underwritten Public Offering under Sections 3.1 or 3.2, the managing underwriter or underwriters to administer the offering shall be determined by the Investor or Investors holding an aggregate of at least a majority in interest of the then outstanding Registrable Securities included in such registration. In the case of an Underwritten Public Offering under Section 3.3, the managing underwriter or underwriters to administer the offering shall be determined by the Company; provided that such underwriter or underwriters shall be reasonably acceptable to such Investors.

Section 3.7 No Inconsistent Agreements; Additional Rights. Neither the Company nor any of its subsidiaries shall hereafter enter into, and neither the Company nor any of its subsidiaries is currently a party to, any agreement with respect to its securities that is inconsistent with the rights granted to the Investors by this Agreement. Without approval of the Investors, neither the Company nor any of its subsidiaries shall enter into any agreement granting registration or similar rights to any Person (other than respect to registration rights granted pursuant to the Second Securities Purchase Agreement and the SWK Warrants), and the Company hereby represents and warrants that, as of the date hereof, no registration or similar rights have been granted to any other Person other than pursuant to this Agreement, the Second Securities Purchase Agreement and the SWK Warrants.

Section 3.8 Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement shall be paid by the Company, including (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the SEC or FINRA, (ii) all fees and expenses in connection with compliance with any securities or "Blue Sky" laws (including reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for

deposit with The Depository Trust Company and of printing Prospectuses), (iv) all fees and disbursements of counsel for the Company and of all independent registered public accounting firms of the Company and any subsidiaries of the Company (including the expenses of any special audit and comfort letters required by or incident to such performance), (v) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice, (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system, (viii) all reasonable fees and disbursements of one legal counsel for the Investors, (ix) any reasonable fees and disbursements of underwriters customarily paid by issuers or sellers of securities, (x) all fees and expenses of any special experts or other Persons retained by the Company in connection with any Registration or sale, (xi) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties) and (xii) all expenses related to the "road show" for any Underwritten Public Offering, including the reasonable out-of-pocket expenses of the Investors and underwriters, if so requested. All such expenses are referred to herein as "Registration Expenses". The Company shall not be required to pay any fees and disbursements to underwriters not customarily paid by the issuers of securities in an offering similar to the applicable offering, including underwriting discounts and commissions and transfer taxes, if any, attributable to the sale of Registrable Securities.

Section 3.9 Indemnification.

Section 3.9.1 Indemnification by the Company. The Company shall indemnify and hold harmless, to the full extent permitted by law, the Investors, each shareholder, member, limited or general partner of any Investor, each shareholder, member, limited or general partner of each such shareholder, member, limited or general partner, each of their respective Affiliates, officers, directors, shareholders, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons and each of their respective Representatives from and against any and all losses, penalties, judgments, suits, costs, claims, damages, liabilities and expenses, joint or several (including reasonable costs of investigation and legal expenses as incurred and any indemnity and contribution payments made to underwriters) (each, a "Loss" and collectively "Losses") arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which Registrable Securities are registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or any other disclosure document produced by or on behalf of the Company or any of its subsidiaries including any report and other document filed under the Exchange Act, (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading or (iii) any violation or alleged violation by the Company or any of its subsidiaries of any federal, state, foreign or common law rule or regulation applicable to the Company or any of its subsidiaries and relating to action or inaction in connection with any such registration, disclosure document or other document or report; provided, that the Investors shall not be entitled to indemnification pursuant to this Section 3.9.1 in respect of any untrue statement or omission contained in any information relating to any Investor furnished in writing by such Investor to the Company specifically for inclusion in a

Registration Statement and used by the Company in conformity therewith (such information "Selling Stockholder Information"). This indemnity shall be in addition to any liability the Company may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Investors or any indemnified party and shall survive the Transfer of such securities by any Investor and regardless of any indemnity agreed to in the underwriting agreement that is less favorable to the Investors. The Company shall also indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, their officers and directors and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above (with appropriate modification) with respect to the indemnification of the indemnified parties.

Section 3.9.2 Indemnification by the Investors. Each Investor shall (severally and not jointly) indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors and officers and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) from and against any Losses resulting from (i) any untrue statement of a material fact in any Registration Statement under which Registrable Securities were registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or (ii) any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading, in each case to the extent, but only to the extent, that such untrue statement or omission is contained in such Investor's Selling Stockholder Information. In no event shall the liability of any Investor hereunder be greater in amount than the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such indemnification obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by such Investor pursuant to Section 3.9.4 and any amounts paid by such Investor as a result of liabilities incurred under the underwriting agreement, if any, related to such sale.

Section 3.9.3 Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder only to the extent, if at all, that it forfeits substantive legal rights by reason of such delay or failure) and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (i) the indemnifying party has agreed in writing to pay such fees or expenses, (ii) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to indemnification hereunder and employ counsel reasonably satisfactory to such Person, (iii) the indemnified party has reasonably concluded (based upon advice of its outside counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, or (iv) in the reasonable judgment of any such Person (based upon advice of its outside counsel) a conflict of interest may exist between

such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If the indemnifying party assumes the defense, the indemnifying party shall not have the right to settle such action without the consent of the indemnified party, which shall not be unreasonably withheld, conditioned or delayed. No indemnifying party shall consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of an unconditional release from all liability in respect to such claim or litigation without the prior written consent of such indemnified party. If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its prior written consent, but such consent may not be unreasonably withheld, conditioned or delayed. It is understood that the indemnifying party or parties shall not, except as specifically set forth in this Section 3.9.3, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements or other charges of more than one separate firm admitted to practice in such jurisdiction at any one time unless (x) the employment of more than one counsel has been authorized in writing by the indemnifying party or parties, (y) an indemnified party has reasonably concluded (based on the advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other indemnified parties or (z) a conflict or potential conflict exists or may exist (based upon advice of counsel to an indemnified party) between such indemnified party and the other indemnified parties, in each of which cases the indemnifying party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

Section 3.9.4 Contribution. If for any reason the indemnification provided for in Section 3.9.1 and Section 3.9.2 is unavailable to an indemnified party or insufficient in respect of any Losses referred to therein (other than as a result of exceptions or limitations on indemnification contained in Section 3.9.1 and Section 3.9.2), then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party or parties on the other hand in connection with the acts, statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. In connection with any Registration Statement filed with the SEC by the Company, the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if contribution pursuant to this Section 3.9.4 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 3.9.4. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an indemnified party as a result of the Losses referred to in Sections 3.9.1 and 3.9.2 shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such

indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 3.9.4, in connection with any Registration Statement filed by the Company, no Investor shall not be required to contribute any amount in excess of the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such indemnification obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by such Investor pursuant to Section 3.9.2 and any amounts paid by such Investor as a result of liabilities incurred under the underwriting agreement, if any, related to such sale. If indemnification is available under this Section 3.9, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Sections 3.9.1 and 3.9.2 hereof without regard to the provisions of this Section 3.9.4. The remedies provided for in this Section 3.9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

Section 3.10 Rules 144 and 144A and Regulation S. The Company shall file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Investor, make publicly available such necessary information for so long as necessary to permit sales that would otherwise be permitted by this Agreement pursuant to Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time or any similar rule or regulation hereafter adopted by the SEC), and it will take such further action as any Investor may reasonably request, all to the extent required from time to time to enable the Investors to sell Registrable Securities without Registration under the Securities Act in transactions that would otherwise be permitted by this Agreement and within the limitation of the exemptions provided by (i) Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Investor, the Company will deliver to the Investors a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

Section 3.11 Existing Registration Statements. Notwithstanding anything herein to the contrary and subject to applicable law and regulation, the Company may satisfy any obligation hereunder to file a Registration Statement or to have a Registration Statement become effective by a specified date by designating, by notice to each Investor, a Registration Statement that previously has been filed with the SEC or become effective, as the case may be, as the relevant Registration Statement for purposes of satisfying such obligation, and all references to any such obligation shall be construed accordingly; provided that such previously filed Registration Statement may be, and is, amended or, subject to applicable securities laws, supplemented to add the number of Registrable Securities, and, to the extent necessary, to identify the Investors as selling stockholders demanding the filing of a Registration Statement pursuant to the terms of this Agreement. To the extent this Agreement refers to the filing or effectiveness of other Registration Statements, by or at a specified time and the Company has, in lieu of then filing such Registration Statements or having such Registration Statements become effective, designated a previously filed or effective Registration Statement as the relevant Registration Statement for such purposes, in accordance with the preceding sentence, such references shall be construed to refer to such designated Registration Statement, as amended or supplemented in the manner contemplated by the immediately preceding sentence.

ARTICLE 4

MISCELLANEOUS

Section 4.1 Authority: Effect. Each party hereto represents and warrants to and agrees with each other party that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized on behalf of such party and do not violate any agreement or other instrument applicable to such party or by which its assets are bound. This Agreement does not, and shall not be construed to, give rise to the creation of a partnership among any of the parties hereto, or to constitute any of such parties members of a joint venture or other association. The Company and its subsidiaries shall be jointly and severally liable for all obligations of each such party pursuant to this Agreement.

Section 4.2 Notices. Any notices, requests, demands and other communications required or permitted in this Agreement shall be effective if in writing and (i) delivered personally, (ii) sent by facsimile or e-mail, or (iii) sent by overnight courier, in each case, addressed as follows:

If to the Company to:

pSivida Corp.
480 Pleasant Street
Watertown, Massachusetts 02472
Attention: John D. Mercer
Telephone: (610) 254-9200
Facsimile: (617) 924-1392
Email: jmercer@psivida.com

With a copy to (which shall not constitute notice):

Hogan Lovells
1735 Market Street
23rd Floor
Philadelphia, PA 19103
Attention: Steven J. Abrams
Telephone No.: (267) 675-4642
Facsimile No.: (267) 675-4601
E-mail: steve.abrams@hoganlovells.com

If to an Investor, to:

EW Healthcare Partners, L.P.
EW Healthcare Partners-A, L.P.
21 Waterway Avenue, Suite 225
The Woodlands, TX 77380
Attn: Richard Kolodziejcyk, Chief Financial Officer
Email: rkolodziejcy@ewhv.com
Office: (281) 364-1555
Facsimile: (281) 364-9755

with a copy (which shall not constitute notice) to:

Reed Smith LLP
599 Lexington Avenue
Attention: Mark G. Pedretti
Email: mpedretti@reedsmith.com
Office: (212) 549-0408
Facsimile: (212) 521-5450

Notice to the holder of record of any Registrable Securities shall be deemed to be notice to the holder of such securities for all purposes hereof.

Unless otherwise specified herein, such notices or other communications shall be deemed effective (i) on the date received, if personally delivered, (ii) on the date received if delivered by facsimile or e-mail on a Business Day, or if not delivered on a Business Day, on the first Business Day thereafter and (iii) two (2) Business Days after being sent by overnight courier. Each of the parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

Section 4.3 Termination and Effect of Termination. This Agreement shall terminate upon the date on which the Investors no longer holds any Registrable Securities, except for the provisions of Sections 3.8 and 3.9, which shall survive any such termination. No termination under this Agreement shall relieve any Person of liability for breach or Registration Expenses incurred prior to termination. In the event this Agreement is terminated, each Person entitled to indemnification rights pursuant to Section 3.9 hereof shall retain such indemnification rights with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

Section 4.4 Permitted Transferees. The rights of the Investors hereunder may be assigned (but only with all related obligations as set forth below) in connection with a Transfer of Registrable Securities to a Permitted Transferee of the Investor. Without prejudice to any other or similar conditions imposed hereunder with respect to any such Transfer, no assignment permitted under the terms of this Section 4.4 will be effective unless the Permitted Transferee to which the assignment is being made, if not an Investor, has delivered to the Company a written acknowledgment and agreement in form and substance reasonably satisfactory to the Company that the Permitted Transferee will be bound by, and will be a party to, this Agreement. A Permitted Transferee to whom rights are transferred pursuant to this Section 4.4 may not again transfer those rights to any other Permitted Transferee, other than as provided in this Section 4.4.

Section 4.5 Remedies. The parties to this Agreement shall have all remedies available at law, in equity or otherwise in the event of any breach or violation of this Agreement or any default hereunder. The parties acknowledge and agree that in the event of any breach of this Agreement, in addition to any other remedies that may be available, each of the parties hereto shall be entitled to specific performance of the obligations of the other parties hereto and, in

addition, to such other equitable remedies (including preliminary or temporary relief) as may be appropriate in the circumstances. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any such delay, omission nor waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

Section 4.6 Amendments. This Agreement may not be orally amended, modified, extended or terminated, nor shall any oral waiver of any of its terms be effective. This Agreement may be amended, modified, extended or terminated, and the provisions hereof may be waived, only by an agreement in writing signed by the Company and Investors holding a majority of the then outstanding Registrable Securities. Each such amendment, modification, extension or termination shall be binding upon each party hereto. In addition, each party hereto may waive any right hereunder by an instrument in writing signed by such party.

Section 4.7 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.8 Consent to Jurisdiction. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the New York Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

Section 4.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 4.10 Merger; Binding Effect, Etc. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, supersedes all prior or contemporaneous oral or written agreements or discussions with respect to such subject matter, and shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective heirs, representatives, successors and permitted assigns. Except as otherwise expressly provided herein, neither the Investors nor any other party hereto may assign any of its respective rights or delegate any of its respective obligations under this Agreement without the prior written consent of the other parties hereto, and any attempted assignment or delegation in violation of the foregoing shall be null and void.

Section 4.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one instrument.

Section 4.12 Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 4.13 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, the Company and the Investors covenant, agree and acknowledge that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any current or future director, officer, employee, general or limited partner or member of any Investor or of any Affiliate or assignee thereof, as such, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of any Investor or any current or future member of any Investor or any current or future director, officer, employee, partner or member of any Investor or of any Affiliate or assignee thereof, as such, for any obligation of any Investor under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

COMPANY:

pSivida Corp.

By: _____

Name: Nancy Lurker
Title: President and Chief Executive Officer

[*Signature Page to First Registration Rights Agreement*]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

INVESTORS:

EW Healthcare Partners, L.P.

By: _____
Name:
Title:

EW Healthcare Partners-A, L.P.

By: _____
Name:
Title:

[Signature Page to First Registration Rights Agreement]

EXHIBIT B

FORM OF IRREVOCABLE TRANSFER AGENT INSTRUCTIONS

[PSIVIDA LETTERHEAD]

March __, 2018

Computershare Trust Company, N.A.
Transfer Agent and Registrar
[Address]

ATTN: _____

Ladies and Gentlemen:

You are hereby authorized and requested, as Registrar and Transfer Agent of the common stock of pSivida Corp. (the "Corporation"), to issue share certificates representing an aggregate of _____ shares of common stock (the "Shares") in such names and amounts set forth on Schedule A hereto.

Please issue and countersign share certificates in the names of the individuals and entities set forth on Schedule A, and deliver such certificates by certified overnight delivery to the addresses corresponding to such individuals and entities, set forth in Schedule A hereto. Please also update the records on Computershare's system for the Shares at the time of sale of the Shares on _____, 2018.

The Shares should bear a restrictive legend acknowledging that, among other things, the Shares are restricted under U.S. securities laws. The required legend that should appear on the Shares is set forth in the attached Schedule B.

[Signature Page Follows]

Very truly yours,

PSIVIDA CORP.

By: _____
Name:
Title:

Received and Acknowledged:

COMPUTERSHARE TRUST COMPANY, N.A.

By: _____
Name:
Title:

SCHEDULE A

Common Stock Recipients

Purchaser Exact Name	Address for Notice	Address for Delivery	Tax ID	Share Amount
EW Healthcare Partners L.P.	21 Waterway Avenue, Suite 225 The Woodlands, TX 77380	21 Waterway Avenue, Suite 225 The Woodlands, TX 77380		8,273,461
EW Healthcare Partners-A L.P.	21 Waterway Avenue, Suite 225 The Woodlands, TX 77380	21 Waterway Avenue, Suite 225 The Woodlands, TX 77380		332,863

SCHEDULE B

Share Certificate Legend

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER THE SECURITIES ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

EXHIBIT C

FORM OF SECRETARY'S CERTIFICATE

PSIVIDA CORP.

SECRETARY'S CERTIFICATE

Reference is made to that certain Securities Purchase Agreement, dated as of March 28, 2018, by and among pSivida Corp, a Delaware corporation (the "Company"), and each purchaser identified on the signature pages thereto (the "Securities Purchase Agreement"). Capital Terms used herein and not defined have the meanings ascribed to them in the Securities Purchase Agreement.

I, John D. Mercer, the duly elected, qualified and acting Secretary of pSivida Corp., a Delaware corporation (the "Company"), do hereby certify that:

1. A true and complete copy of resolutions relating to the issuance of _____ shares of common stock, par value $0.001 per share of the Company to those purchasers identified in the Securities Purchase Agreement, dated as of March 28, 2018, and the transactions contemplated in the Transaction Documents by and among the Company and the purchasers named therein, as adopted by the Board of Directors of the Company by unanimous written consent dated as of March __, 2018, is attached hereto as Exhibit A; and such resolutions have not been amended or revoked and are in full force and effect on the date hereof;

2. Attached hereto as Exhibit B are true and complete copies of the Company's (i) Certificate of Incorporation and (ii) By-laws. Such Certificate of Incorporation and By-laws have not been amended or modified in any way and each remains in full force and effect on and as of the date hereof; and

3. The persons listed below have been duly elected to, and presently hold, the office or offices in the Company set opposite his or her name and have been duly authorized to execute and deliver on behalf of the Company any instruments, consents, or agreements required under the Transaction Documents to which the Company is a party and each signature set opposite each name is a true and correct copy of such officer's signature.

Name	Office	Signature
Nancy Lurker	Chief Executive Officer	_____
Leonard S. Ross	VP, Finance and Chief Accounting Officer	_____

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned has signed this Certificate this 28th day of March, 2018.

John D. Mercer
Secretary

The undersigned, the Chief Executive Officer of the Company, does hereby certify that John D. Mercer is, and at all times since March 1, 2017 has been, the duly elected, qualified and acting Secretary of the Company and that the signature appearing above is his genuine signature.

Nancy Lurker
Chief Executive Officer

EXHIBIT D

FORM OF OFFICER'S CERTIFICATE

PSIVIDA CORP

OFFICER'S CERTIFICATE

Reference is made to that certain Securities Purchase Agreement, dated as of March 28, 2018, by and among pSivida Corp, a Delaware corporation (the "Company"), and each purchaser identified on the signature pages thereto (the "Securities Purchase Agreement"). Capital Terms used herein and not defined have the meanings ascribed to them in the Securities Purchase Agreement.

I, Nancy Lurker, hereby certify as follows:

1. The representations and warranties of the Company contained in the Securities Purchase Agreement are true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties are true and correct) on and as of the date hereof as though made on and as of the date hereof, except that such representations and warranties that relate to an earlier date were true and correct on and as of such earlier date.

2. The Company has performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the date hereof.

3. Since the date of execution of the Securities Purchase Agreement, no event or series of events has occurred that has had or would reasonably be expected to have a Material Adverse Effect; provided, that none of the following shall be taken into account in determining whether there has been or will be a Material Adverse Effect: (a) any change in the market price or trading volume of the Common Shares on the Principal Trading Market; (b) any change in the industries or markets in which the Company or its Subsidiaries operates generally or the United States economy or in other countries in which the Company conducts material operations, or in the financial markets or political conditions generally; (c) any failure by the Company to meet internal or other estimates, predictions, projections or forecasts, including as provided to Purchaser by the Company or any of the Company's representatives, related to revenue, loss of goods, operating expense, net income or any other measure of financial performance, (d) any change or effect arising from or relating to any change in legal requirements or GAAP (or interpretations of any legal requirements or GAAP) unrelated to the transactions contemplated by this Agreement and of general applicability; (e) any litigation or adverse change proximately caused by the consummation of the transactions contemplated hereby, or the public announcement of the execution of, this Agreement (provided any such public announcement is not in breach of this Agreement) and the transactions contemplated hereby or (f) acts or war or terrorism or any escalation or material worsening of any such acts of war or terrorism; provided, with respect to clauses (a), (b) and (d), that such changes do not, individually or in the aggregate, have a disproportionate adverse impact on the Company and its Subsidiaries, taken as a whole, relative to any other Person in the industries or markets in which the Company operates.

4. The undersigned is a duly elected or appointed, qualified and acting officer of the Company, holding the office of Chief Executive Officer; said officer has been duly authorized to execute and deliver on behalf of the Company any instruments, consents or agreements required under the Transaction Documents to which the Company is a party that she has executed and delivered.

[*Signature page follows*]

IN WITNESS WHEREOF, the undersigned has signed this Officers' Certificate this 28th day of March, 2018.

By: _____
Name: Nancy Lurker
Title: President and Chief Executive Officer

EXHIBIT E

FORM OF ACCREDITED INVESTOR QUESTIONNAIRE

PSIVIDA CORP
ACCREDITED INVESTOR QUESTIONNAIRE

Ladies and Gentlemen:

The undersigned hereby represents that the undersigned has read the definition of "Accredited Investor" from Rule 501 of Regulation D attached hereto as Exhibit A and certifies that either (check one):

☐ The undersigned is an "Accredited Investor" (please check the appropriate box on Exhibit A to indicate which of the categories listed describes the investing entity or individual); or

☐ The undersigned is not an "Accredited Investor."

The foregoing representation is true and accurate as of the date first written below. **The undersigned acknowledges and agrees that pSivida Corp. will be entitled to rely on the truth and accuracy of the foregoing.**

Very truly yours,

Dated: _____, 2018

By: _____
Signature

Its: _____
Print Title (if applicable)

Address (at the State of Domicile): _____

Daytime Telephone Number: _____

Email: _____

Daytime Fax Number: _____

EXHIBIT A

Rule 501. Definitions and Terms Used in Regulation D.

As used in Regulation D, the following terms have the meaning indicated:

(a) **Accredited Investor.** "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

- ☐ Any natural person whose individual net worth[1], or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000 (excluding the value of such person's primary residence);
- ☐ Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- ☐ Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- ☐ Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
- ☐ Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;
- ☐ Any director, executive officer or general partner of the issuer of the securities being offered or sold, or any director, executive officer or general partner of a general partner of that issuer;
- ☐ Any trust with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii);
- ☐ Any entity in which all of the equity owners are Accredited Investors.

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1 In calculating net worth, an individual may include equity in his or her personal property and real estate (other than his or her primary residence), cash, short-term investments, stock and securities. Inclusion of equity in personal property and real estate (other than an individual's primary residence) should be based on the fair market value of such property less debt secured by such property. An individual may not include the value of his or her primary residence in calculating net worth and may exclude the amount of any indebtedness secured by his or her primary residence up to the fair market value of the residence. The amount of any indebtedness secured by an individual's primary residence in excess of fair market value of the residence must be included as a liability in calculating net worth. An individual must also include as a liability any increase in the amount of debt secured by his or her primary residence incurred within 60 days prior to the date of his or her subscription for the Securities unless such debt is incurred in connection with the acquisition of the primary residence.

EXHIBIT F

FORM OF LOCK-UP

Lock-Up Agreement

March __, 2018

EW Healthcare Partners, L.P.
EW Healthcare Partners-A, L.P.
21 Waterway Avenue, Suite 255
The Woodlands, TX 77380

Ladies and Gentlemen:

As an inducement to the purchasers listed above (the "***Purchasers***") to execute the Securities Purchase Agreement (the "***Purchase Agreement***") among the Purchasers and pSivida Corp. (the "*Company*") providing for an initial investment (the "***Investment***") in shares of common stock (the "***Common Stock***") of the Company, the undersigned, by executing this lock-up agreement (this "***Agreement***"), agrees that without, in each case, the prior written consent of the Purchasers holding a majority of the shares of Common Stock purchased pursuant to the Purchase Agreement, during the period specified in the second succeeding paragraph (the "***Lock-Up Period***"), the undersigned will not: (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into, exercisable or exchangeable for or that represent the right to receive Common Stock (including without limitation, Common Stock which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant), whether now owned or hereafter acquired (the "**Undersigned's Securities**"); (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned's Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; (3) make any demand for, or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for Common Stock; or (4) publicly disclose the intention to do any of the foregoing.

The undersigned agrees that the foregoing restrictions preclude the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of the Undersigned's Securities even if the Undersigned's Securities would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include, without limitation, any short sale or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any of the Undersigned's Securities or with respect to any security that includes, relates to or derives any significant part of its value from the Undersigned's Securities.

The Lock-Up Period will commence on the date of this Agreement and continue and include the date that is the earlier of (a) the date of the closing of the transactions contemplated by the Second Securities Purchase Agreement (the "*Second Securities Purchase Agreement*") by and among the Company and the investors signatory thereto dated the date hereof (the "*Additional Investment*") and (b) the date of the Company's first meeting of stockholders at which a proposal to approve the Additional Investment is not approved by the Company's stockholders. The Company will provide the undersigned with written notice confirming the expiration of the Lock-Up Period.

Notwithstanding the foregoing, the undersigned may transfer the Undersigned's Securities: (i) as a *bona fide* gift or gifts; (ii) to the immediate family of the Undersigned or any trust, partnership, limited liability company or other entity for the direct or indirect benefit of the undersigned or the immediate family of the undersigned; or (iii) by testate succession or intestate succession; *provided*, in the case of clauses (i)-(iii), that (x) such transfer shall not involve a disposition for value, (y) the transferee agrees in writing with the Purchasers to be bound by the terms of this Agreement and (z) no filing by any party under Section 16(a) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), shall be required or shall be made voluntarily in connection with such transfer (other than a filing on a Form 5 filed within 45 days of December 31, 2018, in which case such Form 5 shall include a footnote describing the transaction being reported). For purposes of this Agreement, "immediate family" shall mean any relationship by blood, marriage, domestic partnership or adoption, not more remote than first cousin. Additionally, any Common Stock acquired by the undersigned in the open market on or after the date of the Purchase Agreement will not be subject to this Agreement; *provided* no filing under Section 16(a) of the Exchange Act by any party shall be voluntarily made in connection with any subsequent sale, transfer, gift or disposition of such Common Stock.

In addition, the foregoing restrictions shall not apply to:

(i) the exercise of stock options granted pursuant to the Company's equity incentive plans (including by "net" or "cashless exercise") or warrants that are described in the Company's Exchange Act reports; *provided* that the terms of this Agreement shall apply to any of the Undersigned's Securities issued upon such exercise;

(ii) transfers of the Undersigned's Securities to the Company as forfeitures to satisfy tax withholding obligations pursuant to the Company's equity incentive plans or inducement awards that are described in the Company's Exchange Act reports;

(iii) transfers of the Undersigned's Securities to the Company by an executive officer or director upon death, disability or termination of employment or service, in each case, of such executive officer or director, as applicable;

(iv) transfers of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction made to all holders of the Company's capital stock involving a change of control of the Company; *provided* that in the event that such tender offer, merger, consolidation or other such transaction is terminated and the Undersigned's Securities are returned to the Undersigned, the Undersigned's Securities shall again be subject to the restrictions contained in this Agreement;

(v) transfers of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock by operation of law to a spouse, former spouse, domestic partner, former domestic partner, child or other dependent pursuant to a qualified domestic order

or in connection with a divorce settlement; *provided* that the transferee agrees in writing to be bound by the terms of this Agreement prior to such transfer and, if the undersigned is required to file a report under Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of shares of Common Stock during the Lock-Up Period, that the undersigned shall include a statement in such report to the effect that the transfer occurred by operation of law, such as pursuant to a qualified domestic order or in connection with a divorce settlement, as applicable;

(vi) the establishment of any contract, instruction or plan (a "**Plan**") that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act ("**Rule 10b5-1**"); *provided* that no sales of the Undersigned's Securities shall be made pursuant to such a Plan prior to the expiration of the Lock-Up Period, and such a Plan may only be established if no public announcement of the establishment or existence thereof and no filing with the Securities and Exchange Commission or other regulatory authority in respect thereof or transactions thereunder or contemplated thereby, by the undersigned, the Company or any other person, shall be required, and no such announcement or filing is made voluntarily, by the undersigned, the Company or any other person, prior to the expiration of the Lock-Up Period; or

(vii) the sale or disposal of shares of Common Stock pursuant to a Plan that satisfies all of the requirements of Rule 10b5-1 and that is in effect as of the date of the Purchase Agreement; *provided* if the undersigned is required to file a report under Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of shares of Common Stock during the Lock-Up Period, the undersigned shall include a statement in such report to the effect that the transfer was made pursuant to a Plan established to comply with Rule 10b5-1.

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Common Stock if such transfer would constitute a violation or breach of this Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that the undersigned shall be released from all obligations under this Agreement if (i) the Company notifies the Purchasers that it does not intend to proceed with the Investment, or (ii) the Purchase Agreement (other than the provisions thereof which survive termination) is terminated prior to payment for and delivery of the Common Stock to be sold thereunder.

The undersigned understands that the Purchasers are entering into the Purchase Agreement and proceeding with the Investment in reliance upon this Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

[*Signature Page Follows*]

Very truly yours,

EXHIBIT 10.2

EXECUTION VERSION

SECOND SECURITIES PURCHASE AGREEMENT

This Second Securities Purchase Agreement (this "*Agreement*") is dated as of March 28, 2018, by and among pSivida Corp., a Delaware corporation (the "*Company*"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "*Purchaser*" and collectively, the "*Purchasers*").

RECITALS

A. The Company and each Purchaser is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder (the "*Securities Act*"), and Rule 506(b) of Regulation D ("*Regulation D*") as promulgated by the United States Securities and Exchange Commission (the "*Commission*") under the Securities Act.

B. EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. (collectively, the "*EW Purchasers*") have agreed to purchase from the Company 8,606,324 Common Shares pursuant to the Securities Purchase Agreement by and among the Company and each such EW Purchaser dated as of the date hereof (the "*Initial Securities Purchase Agreement*").

C. Each Purchaser, severally and not jointly, wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, units (each a "*Unit*") the dollar amount of such Units being purchased set forth below such Purchaser's name on the signature page of this Agreement (which aggregate amount for all Purchasers together shall be $25,533,043.60), with each Unit consisting of (i) one share of the Company's common stock, par value $0.001 per share (each, a "*Common Share*" and collectively with all Common Shares issuable hereunder, the "*Purchased Shares*") and (ii) one warrant to purchase a Common Share, the form of which is attached hereto as Exhibit A (each, a "*Warrant*" and the Common Shares issuable upon the exercise of all Warrants issuable hereunder shall be collectively referred to herein as the "*Warrant Shares*" and, collectively with the Purchased Shares and the Warrants, the "*Securities*").

D. Contemporaneously with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Second Registration Rights Agreement, substantially in the form attached hereto as Exhibit B (the "*Second Registration Rights Agreement*"), pursuant to which, among other things, the Company will agree to provide certain registration rights with respect to the Purchased Shares and the Warrant Shares under the Securities Act.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchasers hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions . In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms shall have the meanings indicated in this Section 1.1:

"*Accountant*" has the meaning set forth in Section 3.1(f).

"*Additional Purchasers*" has the meaning set forth in Section 2.1(a).

"*Affiliate*" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is controlled by or is under common control with such Person, as such terms are used in and construed under Rule 405 under the Securities Act. With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser.

"*Agreement*" has the meaning set forth in the Preamble.

"*Applicable Laws*" has the meaning set forth in Section 3.1(u).

"*ASX*" means the Australian Securities Exchange.

"*Authorizations*" has the meaning set forth in Section 3.1(u).

"*Board of Directors"* means the board of directors of the Company.

"*Business Day*" means any day except Saturday, Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"*Change of Control Waivers*" has the meaning set forth in Section 5.1(k).

"*Closing*" means the closing of the purchase and sale of the Units pursuant to this Agreement.

"*Closing Date*" means the Trading Day when all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all of the conditions set forth in Sections 2.1, 2.2, 5.1 and 5.2 hereof are satisfied or waived, as the case may be, which shall be the third Trading Day after receipt of Stockholder Approval, or such other date as the parties may agree.

"*Code*" has the meaning set forth in Section 3.1(dd).

"*Commission*" has the meaning set forth in the Recitals.

"*Common Shares*" has the meaning set forth in the Recitals, and also includes any other class of securities into which the Common Shares may hereafter be reclassified or changed into.

"*Company*" has the meaning set forth in the Preamble.

"*Company Counsel*" means Hogan Lovells US LLP, with offices located at 1735 Market Street, 23rd Floor, Philadelphia, PA 19103.

"*Company Deliverables*" has the meaning set forth in Section 2.2(a).

"*Control*" (including the terms "controlling", "controlled by" or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Credit Agreement*" means that certain Credit Agreement, dated as of even date herewith, among the Company, SWK Funding LLC, as agent, sole lead arranger and sole bookrunner, and the financial institutions party thereto from time to time as lenders, in the form approved by the EW Purchasers, which approval shall not be unreasonably withheld, conditioned or delayed.

"*Debt Financing*" means the transactions contemplated by the Credit Agreement.

"*Disclosure Materials*" has the meaning set forth in Section 3.1(a).

"*Disclosure Schedules*" means the Disclosure Schedules of the Company delivered concurrently herewith.

"*DTC*" means the Depository Trust Company.

"*EMA*" means the European Medicines Agency.

"*English Subsidiary*" has the meaning set forth in Section 3.1(g).

"*Environmental Laws*" has the meaning set forth in Section 3.1(x).

"*ERISA*" has the meaning set forth in Section 3.1(dd).

"*Evaluation Date*" has the meaning set forth in Section 3.1(aa).

"*EW Purchasers*" has the meaning set forth in the Recitals.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"*FDA*" means the U.S. Food and Drug Administration.

"*First Closing*" means the closing of the transactions contemplated by the Initial Securities Purchase Agreement.

"*First Registration Rights Agreement*" means the Registration Rights Agreement, dated as of even date herewith, by and among the Company and each of the EW Purchasers as contemplated by the Initial Securities Purchase Agreement.

"*First Registration Statement*" means a registration statement meeting the requirements set forth in the First Registration Rights Agreement and covering the resale by the applicable EW Purchasers of the Registrable Securities (as defined in the First Registration Rights Agreement).

"*Forward-Looking Statement*" has the meaning set forth in Section 3.1(ee).

"*GAAP*" means U.S. generally accepted accounting principles, as applied on a consistent basis.

"*Icon*" means Icon Bioscience, Inc., a Delaware corporation.

"*Icon Acquisition*" means the transactions contemplated by that certain Agreement and Plan of Merger, dated as of even date herewith, by and among the Company, Icon, Oculus Merger Sub, Inc., a Delaware corporation, and Stockholder Representative Services LLC, a Colorado limited liability company.

"*Indemnified Person*" has the meaning set forth in Section 4.5(b).

"*Initial Investment*" means the transactions contemplated by the Initial Securities Purchase Agreement.

"*Initial Purchase Price*" means the consolidated closing bid price on the Principal Trading Market immediately preceding the time of execution of the Initial Securities Purchase Agreement, which shall be $1.10 per share.

"*Initial Purchaser Designee*" has the meaning set forth in Section 4.9(b).

"*Initial Securities Purchase Agreement*" has the meaning set forth in the Recitals.

"*Intellectual Property*" has the meaning set forth in Section 3.1(w).

"*Irrevocable Transfer Agent Instructions*" means the form of transfer agent instruction letter attached hereto as Exhibit C.

"*Lock Up Period*" has the meaning set forth in Section 4.10.

"*Material Adverse Effect*" has the meaning set forth in Section 3.1(g).

"*Money Laundering Laws*" has the meaning set forth in Section 3.1(ll).

"*OFAC*" has the meaning set forth in Section 3.1(mm).

"*Off Balance Sheet Transaction*" has the meaning set forth in Section 3.1(bb).

"*Permit*" has the meaning set forth in Section 3.1(t).

"*Person*" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"*Press Release*" has the meaning set forth in Section 4.4.

"*Principal Trading Market*" means the Trading Market on which the Common Shares are primarily listed on and quoted for trading, which, as of the date of this Agreement and the Closing Date, is the Nasdaq Global Market.

"*Proceeding*" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"*Purchase Price*" means an amount equal to the lower of (i) $1.265 (a fifteen percent (15%) premium to the Initial Purchase Price), and (ii) a twenty percent (20%) discount to the VWAP of the Common Shares on the Principal Trading Market for the twenty (20) Trading Days immediately prior to the Closing Date; provided, that in no event shall the Purchase Price be lower than $0.88 (a twenty percent (20%) discount to the Initial Purchase Price).

"*Purchased Shares*" has the meaning set forth in the Recitals.

"*Purchaser*" or "*Purchasers*" has the meaning set forth in the Recitals and shall include any Additional Purchasers.

"*Purchaser Deliverables*" has the meaning set forth in Section 2.2(b).

"*Purchaser Designee*" has the meaning set forth in Section 4.9(a).

"*Purchaser Party*" has the meaning set forth in Section 4.5(a).

"*Registration Statement*" means a registration statement meeting the requirements set forth in the Second Registration Rights Agreement and covering the resale by the Purchasers of the Registrable Securities (as defined in the Second Registration Rights Agreement).

"*Regulation D*" has the meaning set forth in the Recitals.

"*Required Approvals*" means (i) the filing with the Commission of one or more Registration Statements in accordance with the requirements of the Second Registration Rights Agreement, (ii) filings required by applicable state securities laws, if any, (iii) the filing of a Notice of Sale of Securities on Form D with the Commission under Regulation D and any required notice filings under applicable state law, (iv) the filing of any requisite notices and/or application(s) to the Principal Trading Market and ASX for the issuance and sale of the Securities and the listing of the Securities for trading or quotation, as the case may be, thereon in the time and manner required thereby, (v) the filings required in accordance with Section 4.4 of this Agreement, (vi) Stockholder Approval, and (vii) those that have been made or obtained prior to the date of this Agreement.

"*Rule 144*" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"*Rule 506*" means Rule 506 of Regulation D promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"*Rule 506(d) Related Party*" has the meaning set forth in Section 3.2(d).

"*Sarbanes-Oxley Act*" has the meaning set forth in Section 3.1(f).

"*Second Registration Rights Agreement*" has the meaning set forth in Recitals.

"*SEC Reports*" has the meaning set forth in Section 3.1(a).

"*Secretary's Certificate*" has the meaning set forth in Section 2.2(a)(vi).

"*Securities*" has the meaning set forth in the Recitals.

"*Securities Act*" has the meaning set forth in the Recitals.

"*Stockholder Approval*" means such approval as may be required by (i) the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity) from the stockholders of the Company with respect to the transactions contemplated by the Transaction Documents and the issuance of all of the Securities thereunder in excess of 19.99% of the issued and outstanding Common Stock on the date hereof, (ii) the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity) from the stockholders of the Company with respect to a "change of control" under such rules, (iii) any other applicable rule or regulation of the Nasdaq Stock Market (or any successor entity) from the stockholders of the Company with respect to the transactions contemplated by the Transaction Documents and the issuance of all of the Securities thereunder, and (iv) the Company's certificate of incorporation to increase the number of authorized Common Shares thereunder.

"*Stock Certificates*" has the meaning set forth in Section 2.1(c).

"*Subscription Amount*" means, with respect to each Purchaser, the aggregate amount to be paid for the Securities purchased hereunder as indicated on such Purchaser's signature page to this Agreement next to the heading "Aggregate Purchase Price (Subscription Amount)" in United States dollars and in immediately available funds.

"*Subsidiary*" or "*Subsidiaries*" has the meaning set forth in Section 3.1(g).

"*SWK Warrant*" means the warrants to purchase Common Shares issued in connection with the Debt Financing.

"*Trading Day*" means (i) a day on which the Common Shares are listed or quoted and traded on its Principal Trading Market (other than the OTC Bulletin Board), or (ii) if the Common Shares are not listed on a Trading Market (other than the OTC Bulletin Board), a day on which the Common Shares are traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the Common Shares are not quoted on any Trading Market, a day on which the Common Shares are quoted in the over-the-counter market as reported in the "pink sheets" by OTC Markets LLC (or any similar organization or agency succeeding to its functions of reporting prices); *provided*, that in the event that the Common Shares are not listed or quoted as set forth in (i), (ii) and (iii) hereof, then Trading Day shall mean a Business Day.

"*Trading Market*" means whichever of the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTC Bulletin Board on which the Common Shares are listed or quoted for trading on the date in question.

"*Transaction Documents*" means this Agreement, the schedules and exhibits attached hereto, the Warrants, the Second Registration Rights Agreement, the Irrevocable Transfer Agent Instructions and any other documents or agreements explicitly contemplated hereunder and thereunder.

"*Transfer Agent*" means Computershare Trust Company, N.A., or any successor transfer agent for the Company.

"*Unit or Units*" has the meaning set forth in the Recitals.

"*Voting Rights Rule*" has the meaning set forth in Section 4.9(a).

"*VWAP*" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Shares are then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Shares for such date (or the nearest preceding date) on the

Trading Market on which the Common Shares are then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)); or (b) in all other cases, the fair market value of a Common Share as determined by an independent appraiser selected in good faith and mutually agreed upon between the Company and the Purchasers holding a majority of the Purchased Shares and Warrant Shares, the fees and expenses of which shall be paid by the Company.

"*Warrant*" and "*Warrants*" has the meaning set forth in the Recitals.

"*Warrant Certificates*" has the meaning set forth in Section 2.1(c).

"*Warrant Shares*" has the meaning set forth in the Recitals.

ARTICLE II
PURCHASE AND SALE

2.1 Closing.

(a) Amount. Subject to the terms and conditions set forth in this Agreement, at the Closing, the Company shall issue and sell to each Purchaser, and each Purchaser shall, severally and not jointly, purchase from the Company, a Unit consisting of (i) such number of Common Shares equal to the quotient resulting from dividing (A) the Subscription Amount for such Purchaser by (B) the Purchase Price, rounded down to the nearest whole Common Share and (ii) a Warrant to purchase the same number of Common Shares as determined by the preceding clause (i). Notwithstanding the foregoing, the EW Purchasers shall have the option, without the consent of the Company, at any time prior to the Closing, to allocate the purchase of up to fifty percent (50%) of the Units being issued and sold to the EW Purchasers by the Company hereunder to one or more additional accredited investors, as such term is defined in Rule 501 of Regulation D under the Securities Act, that are reasonably acceptable to the Company, which acceptance shall not be unreasonably withheld, conditioned or delayed (each, an "*Additional Purchaser*"), *provided that* any Additional Purchaser shall execute counterpart signature pages to this Agreement and the Second Registration Rights Agreement and any such Additional Purchaser, will, upon delivery to the Company of such signature pages, become parties to, and bound by, the Transaction Agreements each to the same extent as if they had been Purchasers on the date hereof and the "Aggregate Purchase Price (Subscription Amount)" of each EW Purchaser as set forth on the signature pages hereto shall be proportionally reduced by the total "Aggregate Purchase Price (Subscription Amount)" set forth on the signature pages of any Additional Purchasers. For the avoidance of doubt, any Units not allocated to Additional Purchasers shall be purchased by the EW Purchasers at the Closing.

(b) Closing. The Closing of the purchase and sale of the Securities shall take place at the offices of Reed Smith LLP, 599 Lexington Avenue, New York, NY 10022 on the Closing Date or at such other locations or remotely by facsimile transmission or other electronic means as the parties may mutually agree.

(c) Form of Payment. On the Closing Date, each Purchaser shall wire its Subscription Amount, in United States dollars and in immediately available funds, to the account of the Company, in accordance with instructions delivered to the Purchasers on or prior to the Closing Date. On the Closing Date, (i) the Company shall deliver, in immediately available funds to the EW Purchasers, the reimbursable expenses payable to the EW Purchasers pursuant to Section 6.1 of this Agreement (which fees and expenses shall be set forth in instructions from the Purchasers to the Company), and (ii) the Company shall (i) irrevocably instruct the Transfer Agent to provide to each Purchaser one or more stock certificates, free and clear of all restrictive and other legends (except as expressly provided in

Section 4.1(b) hereof), evidencing the number of Common Shares such Purchaser is purchasing based upon such Purchaser's Subscription Amount and the Purchase Price (each, a "*Stock Certificate*") and (ii) the Company shall provide to each Purchaser a Warrant evidencing the Warrants such Purchaser is purchasing based upon such Purchaser's Subscription Amount and the Purchase Price (each, a "*Warrant Certificate*") within two (2) Trading Days after the Closing.

2.2 Closing Deliveries.

(a) On or prior to the Closing, the Company shall issue, deliver or cause to be delivered to each Purchaser the following (the "*Company Deliverables*"):

(i) this Agreement, duly executed by the Company;

(ii) such Purchaser's Warrant Certificate, duly executed by the Company;

(iii) the Second Registration Rights Agreement, duly executed by the Company;

(iv) a legal opinion of Company Counsel, dated as of the Closing Date in form and substance reasonably satisfactory to the Purchasers, executed by such counsel and addressed to the Purchasers;

(v) duly executed Irrevocable Transfer Agent Instructions, in substantially the form attached hereto as Exhibit C, acknowledged in writing by the Transfer Agent instructing the Transfer Agent to deliver such Purchaser's Stock Certificate within two (2) Trading Days;

(vi) a certificate of the Secretary of the Company (the "*Secretary's Certificate*"), dated the Closing Date, (a) certifying the resolutions adopted by the Board of Directors approving the transactions contemplated by this Agreement and the other Transaction Documents and the issuance of the Securities, (b) certifying the current versions of the certificate of incorporation, as amended, and by-laws of the Company and (c) certifying as to the signatures and authority of Persons executing the Transaction Documents and related documents on behalf of the Company, in the form attached hereto as Exhibit D;

(vii) a certificate, dated as of the Closing Date and signed by the Company's Chief Executive Officer certifying to the fulfillment of the conditions specified in Section 5.1(b) and (e) of this Agreement, in the form attached hereto as Exhibit E;

(viii) copies of the Change of Control Waivers, if any; and

(ix) such other information, certificates and documents as the Purchasers may reasonably request.

(b) On or prior to the Closing, each Purchaser shall deliver or cause to be delivered to the Company the following (the "*Purchaser Deliverables*"):

(i) this Agreement, duly executed by each Purchaser;

(ii) its Subscription Amount, in United States dollars and in immediately available funds, in the amount set forth as the "Purchase Price" indicated below such Purchaser's name on the applicable signature page hereto under the heading "Aggregate Purchase Price (Subscription Amount)" by wire transfer to the Company;

(iii) the Second Registration Rights Agreement, duly executed by such Purchaser; and

(iv) a fully completed and duly executed Accredited Investor Questionnaire, reasonably satisfactory to the Company, in the form attached hereto as Exhibit F.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company . The Company hereby represents and warrants to, and agrees with the Purchasers that as of the date of this Agreement, and on the Closing Date, unless such representation, warranty or agreement specifies a different date or time as follows:

(a) SEC Reports; Disclosure Materials. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "*SEC Reports*", and the SEC Reports, together with the Disclosure Schedules and the Form 8-K required to be filed pursuant to Section 4.4, being collectively referred to as the "*Disclosure Materials*") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective filing dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company does not have pending before the Commission any request for confidential treatment of information or any comments from the Commission which have not been resolved.

(b) Disclosure. All of the disclosure furnished by or on behalf of the Company to the Purchasers, whether oral or written, regarding the Company and its Subsidiaries, their businesses and the transactions contemplated by the Transaction Documents, the Icon Acquisition and the Debt Financing, is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2.

(c) Ineligible Issuer. The Company was not and is not an ineligible issuer as defined in Rule 405 for purposes of Rule 144(i).

(d) Financial Information. The consolidated financial statements of the Company included or incorporated by reference in the SEC Reports, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company for the periods specified and have been prepared in compliance with the requirements of the Securities Act and Exchange Act, as applicable, and in conformity with GAAP (except (i) for such adjustments to accounting standards and practices as are noted therein or (ii) in the case of unaudited interim financial statements, to the extent that they may not include footnotes or may be condensed or summary statements) during the periods involved; the other financial and statistical data with respect to the Company and the Subsidiaries contained or incorporated by reference in the SEC Reports, are accurately and fairly presented in all material respects and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements

(historical or pro forma) that are required to be included or incorporated by reference in the SEC Reports that are not included or incorporated by reference as required; the Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off balance sheet obligations), not described in the SEC Reports which are required to be described in the SEC Reports; and all disclosures contained or incorporated by reference in the SEC Reports, if any, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act or Item 10 of Regulation S-K under the Securities Act, to the extent applicable.

(e) Books and Records. The minute books of the Company and the Subsidiaries contain records that are in all material respects accurate of all meetings and other actions of its directors and stockholders for the five year period prior to the Closing Date. The other books and records of the Company have in all material respects been maintained in accordance with prudent business practices and are accurate in all material respects.

(f) Independent Public Accountant. Deloitte & Touche LLP (the "*Accountant*"), whose report on the consolidated financial statements of the Company is filed with the Commission as part of the Company's most recent Annual Report on Form 10-K filed with the Commission, are and, during the periods covered by their report, were independent public accountants within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the knowledge of the Company, with due inquiry, the Accountant is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the "*Sarbanes-Oxley Act*") with respect to the Company.

(g) Organization. The Company and, except for pSiMedica Limited (the "*English Subsidiary*") any subsidiary that is a significant subsidiary (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the Commission) (each, a "*Subsidiary*", collectively, the "*Subsidiaries*"), are duly organized, validly existing as a corporation and in good standing under the laws of their respective jurisdictions of organization. The Company and, except for the English Subsidiary, the Subsidiaries are duly licensed or qualified as a foreign corporation for transaction of business and in good standing under the laws of each other jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such license or qualification, and have all corporate power and authority necessary to own or hold their respective properties and to conduct their respective businesses as described in the SEC Reports, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a material adverse effect or would reasonably be expected to have a material adverse effect on the assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations of the Company and such Subsidiaries taken as a whole, or prevent the consummation of the transactions contemplated hereby (a "*Material Adverse Effect*"). The English Subsidiary is properly incorporated and validly existing under the laws of England. The English Subsidiary has the right, power and authority to perform its business as currently conducted and as disclosed in the SEC Reports and has taken any necessary corporate or other actions to authorize the performance of its business as currently conducted and as disclosed in the SEC Reports.

(h) Subsidiaries. The Company's only Subsidiaries are set forth on Schedule 3.1(h). Except with respect to any liens imposed on the equity interests of the Subsidiaries pursuant to the Credit Agreement, the Company owns directly or indirectly, all of the equity interests of the Subsidiaries, free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, and all the equity interests of the Subsidiaries are validly issued and are fully paid, non-assessable and free of preemptive and similar rights.

(i) No Violation or Default. Neither the Company nor any Subsidiary is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound or to which any of the property or assets of the Company or any Subsidiary is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company, no other party under any material contract or other agreement to which it or any Subsidiary is a party is in default in any respect thereunder where such default would reasonably be expected to have a Material Adverse Effect.

(j) No Material Adverse Effect. Since the date of the most recent financial statements of the Company included or incorporated by reference in the SEC Reports, there has not been (i) any Material Adverse Effect, (ii) any transaction that is material to the Company and the Subsidiaries taken as a whole, except for the Icon Acquisition and the transactions contemplated by the Initial Securities Purchase Agreement and the Credit Agreement, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or the Subsidiaries that is material to the Company and the Subsidiaries taken as a whole, except for the Icon Acquisition and the transactions contemplated by the Credit Agreement, (iv) any material change in the capital stock (other than (A) the grant of equity incentives under the Company's existing stock option plans or other equity incentive plans approved by the Company's stockholders or as inducement grants, (B) changes in the number of outstanding Common Shares of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Shares outstanding on the date hereof, (C) as a result of the Securities issued under this Agreement, the Initial Securities Purchase Agreement and the SWK Warrant, (D) any repurchases of capital stock of the Company, (E) as described in a proxy statement filed on Schedule 14A or a Registration Statement on Form S-4, or (F) as has been publicly announced or disclosed) or outstanding long-term indebtedness of the Company or the Subsidiaries or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company or any Subsidiary, other than in each case above in the ordinary course of business or as otherwise disclosed in the SEC Reports.

(k) Capitalization. The authorized, issued and outstanding share capital of the Company is as set forth on Schedule 3.1(k). The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid, and non-assessable and were issued in compliance with all federal and state securities laws. None of the outstanding shares of capital stock of the Company was issued in violation of the preemptive or other similar rights of any security holder of the Company. Except as a result of (i) the purchase and sale of the Securities under this Agreement, (ii) the purchase and sale of the Securities under the Initial Securities Purchase Agreement, and (iii) the issuance of the SWK Warrant, and except as set forth in the SEC Reports, there are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any Common Shares, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional Common Shares. The issuance and sale of the Securities will not obligate the Company to issue Common Shares or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no stockholders agreements, voting agreements or other agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(l) Authorization; Enforceability. The Company has full legal right, power and authority to enter into the Transaction Documents and perform the transactions contemplated hereby. The Transaction Documents have been duly authorized, executed and delivered by the Company and each is a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) insofar as indemnification and contribution provisions may be limited by applicable law.

(m) Authorization of Securities. The Securities, when issued and delivered pursuant to this Agreement against payment therefor as provided herein, will be duly and validly authorized and issued and fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or other claim (other than any pledge, lien, encumbrance, securities interest or other claim arising from an act or omission of a Purchaser), including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights.

(n) No Consents Required. No consent, waiver, approval, authorization, order, registration or qualification of or with any court or arbitrator or any governmental or regulatory authority, including the Nasdaq or ASX, or any other Person, including the Company's stockholders, is required for the execution, delivery and performance by the Company of the Transaction Agreements, and the issuance and sale by the Company of the Securities as contemplated hereby, other than the Required Approvals. The Company has filed the Listing of Additional Shares Notification with the Principal Trading Market and will, as soon as is reasonably practicable following the execution of this Agreement, but within any proscribed time periods set forth in or otherwise required by the rules and regulations of the ASX, lodge an Appendix 3B with ASX, regarding the Securities to be issued pursuant to this Agreement.

(o) No Preferential Rights. (i) No Person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act, has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Shares or other securities of the Company (other than upon the exercise of options or warrants to purchase Common Shares or settlement of restricted stock units into shares of Common Shares or upon the exercise of options or settlement of restricted stock units that may be granted from time to time under the Company's equity incentive plans or otherwise approved by the Board of Directors or an authorized committee thereof prior to the date hereof), (ii) no Person has any preemptive rights, rights of first refusal, or any other rights (whether pursuant to a "poison pill" provision or otherwise) to purchase any Common Shares or shares of any other capital stock or other securities of the Company from the Company that have not been duly waived with respect to the offering contemplated hereby, (iii) no Person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Securities offered hereunder, and (iv) no Person has the right, contractual or otherwise, to require the Company to register under the Securities Act any Common Shares or shares of any other capital stock or other securities of the Company, or to include any such shares or other securities in the Registration Statement as a result of the filing or effectiveness of the Registration Statement or the sale of the Securities as contemplated thereby or otherwise, other than the EW Purchasers party to the Initial Securities Purchase Agreement and SWK pursuant to the SWK Warrant.

(p) No Conflicts. Neither the execution of this Agreement, nor the issuance, offering or sale of the Securities, nor the consummation of any of the transactions contemplated in the Transaction Documents, nor the compliance by the Company with the terms and provisions of the Transaction Documents will conflict with, or will result in a breach of, any of the terms and provisions of, or has constituted or will constitute a default under, or has resulted in or will result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any contract or other agreement to which the Company may be bound or to which any of the property or assets of the Company is subject, except (i) such conflicts, breaches or defaults as may have been waived and (ii) such conflicts, breaches and defaults that would not reasonably be expected to have a Material Adverse Effect; nor will such action result (x) in any violation of the provisions of the organizational or governing documents of the Company, or (y) in any violation of the provisions of any statute or any order, rule or regulation applicable to the Company or of any court or of any federal, state or other regulatory authority or other government body having jurisdiction over the Company, except where such violation would not reasonably be expected to have a Material Adverse Effect.

(q) No Material Defaults. Neither the Company nor any Subsidiary has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The Company has not filed a report pursuant to Section 13(a) or 15(d) of the Exchange Act since the filing of its last Annual Report on Form 10-K, indicating that it (i) has failed to pay any dividend or sinking fund installment on preferred stock or (ii) has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(r) Enforceability of Agreements. To the knowledge of the Company, all agreements between the Company and third parties expressly referenced in the Disclosure Materials, other than such agreements that have expired by their terms or whose termination is disclosed in Disclosure Materials, are legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification provisions of certain agreements may be limited by federal or state securities laws or public policy considerations in respect thereof, and except for any unenforceability that, individually or in the aggregate, would not unreasonably be expected to have a Material Adverse Effect.

(s) No Litigation. There are no legal, governmental or regulatory Proceedings pending, nor, to the Company's knowledge, any legal, governmental or regulatory investigations, to which the Company or a Subsidiary is a party or to which any property of the Company or any Subsidiary is the subject that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect or materially and adversely affect the ability of the Company to perform its obligations under the Transaction Agreements; to the Company's knowledge, no such actions, suits or Proceedings are threatened or contemplated by any governmental or regulatory authority or threatened by others that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, except as disclosed in the SEC Reports; and (i) there are no current or pending legal, governmental or regulatory investigations, actions, suits or Proceedings that are required under the Securities Act to be described in the Disclosure Materials that are not described in the Disclosure Materials; and (ii) there are no contracts or other documents that are required under the Securities Act or Exchange Act to be filed as exhibits to the SEC Reports that are not so filed.

(t) Licenses and Permits. The Company and the Subsidiaries possess or have obtained, all licenses, certificates, consents, orders, approvals, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective

properties or the conduct of their respective businesses as described in the SEC Reports (the "*Permits*"), except where the failure to possess, obtain or make the same would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary have received written notice of any Proceeding relating to revocation or modification of any such Permit or has any reason to believe that such Permit will not be renewed in the ordinary course, except where the failure to obtain any such renewal would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(u) Compliance with Applicable Laws. The Company and the Subsidiaries: (i) are in compliance with all statutes, rules and regulations applicable to the testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product under development, manufactured or distributed by the Company or the Subsidiaries ("*Applicable Laws*"), except where such noncompliance would not reasonably be expected to have a Material Adverse Effect, (ii) have not received any Form 483 from the FDA, notice of adverse finding, warning letter, or other written correspondence or notice from the FDA, the EMA, or any other federal, state, local or foreign governmental or regulatory authority alleging or asserting material noncompliance with any Applicable Laws or any licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws ("*Authorizations*"), that would, individually or in the aggregate, result in a Material Adverse Effect; (iii) possess all material Authorizations and such Authorizations are valid and in full force and effect and neither the Company nor the Subsidiaries is in violation of any term of any such Authorizations except where such nonpossession, failure or noncompliance would not reasonably be expected to have a Material Adverse Effect; (iv) have not received written notice of any claim, action, suit, Proceeding, hearing, enforcement, investigation, arbitration or other action from the FDA, the EMA, or any other federal, state, local or foreign governmental or regulatory authority or third party alleging that any Company product, operation or activity is in violation of any Applicable Laws or Authorizations which noncompliance would reasonably be expected to have a Material Adverse Effect and has no knowledge that the FDA, the EMA, or any other federal, state, local or foreign governmental or regulatory authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or Proceeding against the Company; (v) have not received written notice that the FDA, EMA, or any other federal, state, local or foreign governmental or regulatory authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any material Authorizations that would reasonably be expected to have a Material Adverse Effect and has no knowledge that the FDA, EMA, or any other federal, state, local or foreign governmental or regulatory authority is considering such action; and (vi) have filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations except where the failure to file, obtain, maintain or submit such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments would not result in a Material Adverse Effect, and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were materially complete and correct on the date filed (or were corrected or supplemented by a subsequent submission) except such incompletions and incorrections as would not reasonably be expected to result in a Material Adverse Effect.

(v) Title to Real and Personal Property. The Company and the Subsidiaries have good and valid title in fee simple to all items of real property and good and valid title to all personal property described in the SEC Reports as being owned by them that are material to the businesses of the Company or such Subsidiary, in each case free and clear of all liens, encumbrances and claims, except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries or (ii) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. To the knowledge of the Company, any real property described in the SEC Reports as being leased by the Company and the Subsidiaries is held by them under

valid, existing and enforceable leases, except those that (A) do not materially interfere with the use made or proposed to be made of such property by the Company or the Subsidiaries or (B) would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect.

(w) Intellectual Property. The Company and the Subsidiaries own or possess adequate enforceable rights to use all patents, patent applications, trademarks (both registered and unregistered), service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the "*Intellectual Property*"), necessary for the conduct of their respective businesses as conducted as of the date hereof, except to the extent that the failure to own or possess adequate rights to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company and the Subsidiaries have not received any written notice of any claim of infringement or conflict that asserted Intellectual Property rights of others, which infringement or conflict would reasonably be expected to result in a Material Adverse Effect; there are no pending, or to the knowledge of the Company, threatened judicial Proceedings or interference proceedings against the Company or its Subsidiaries challenging the Company's or any of its Subsidiary's rights in or to or the validity of the scope of any of the Company's or any Subsidiary's patents, patent applications or proprietary information; to the knowledge of the Company, no other entity or individual has any right or claim in any of the Company's or any of its Subsidiary's patents, patent applications or any patent to be issued therefrom by virtue of any contract, license or other agreement entered into between such entity or individual and the Company or any Subsidiary or by any non-contractual obligation, other than by written licenses granted by the Company or any Subsidiary; the Company and the Subsidiaries have not received any written notice of any claim challenging the rights of the Company or its Subsidiaries in or to any Intellectual Property owned, licensed or optioned by the Company or any Subsidiary which claim would reasonably be expected to result in a Material Adverse Effect.

(x) Environmental Laws. The Company and the Subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "*Environmental Laws*"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses as described in the SEC Reports; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(y) Insurance. The Company and the Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as the Company and the Subsidiaries reasonably believe are adequate for the conduct of their business and as is customary for companies of similar size engaged in similar businesses in similar industries. The Company has no reason to believe that it or any of its Subsidiaries will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect. Neither of the Company nor any of its Subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(z) Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply with any applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission during the past 12 months. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Exchange Act Rules 13a-15 and 15d-15.

(aa) Disclosure Controls. The Company maintains systems of internal accounting controls designed to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company is not aware of any material weaknesses in its internal control over financial reporting. Since the date of the latest audited financial statements of the Company included in its Annual Report on Form 10-K, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company and the Subsidiaries is made known to the certifying officers by others within those entities, particularly during the period in which the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "*Evaluation Date*"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the most recent Evaluation Date. Since the most recent Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Securities Act) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal controls. The Company's "internal controls over financial reporting" and "disclosure controls and procedures" are effective.

(bb) Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its Affiliates and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity (each, an "*Off Balance Sheet Transaction*") that could reasonably be expected to affect materially the Company's liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the Commission's Statement about Management's Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the SEC Reports which have not been described as required.

(cc) Labor Disputes. No labor disturbance by or dispute with employees of the Company or any Subsidiary exists or, to the knowledge of the Company, is threatened that would reasonably be expected to result in a Material Adverse Effect.

(dd) ERISA. To the knowledge of the Company, each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"), that is maintained, administered or contributed to by the Company or any of its Affiliates for employees or former employees of the Company and the Subsidiaries has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the "*Code*"); no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions.

(ee) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) (a "*Forward-Looking Statement*") contained in the SEC Reports has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith. The Forward-Looking Statements made in the Company's Annual Report on Form 10-K for the fiscal year most recently ended (i) except for any Forward-Looking Statement included in any financial statements and notes thereto, are within the coverage of the safe harbor for forward looking statements set forth in Section 27A of the Securities Act, Rule 175(b) under the Securities Act or Rule 3b-6 under the Exchange Act, as applicable, (ii) were made by the Company with a reasonable basis and in good faith and reflect the Company's good faith commercially reasonable best estimate of the matters described therein as of the respective dates on which such statements were made, and (iii) have been prepared in accordance with Item 10 of Regulation S-K under the Securities Act.

(ff) Margin Rules. Neither the issuance, sale and delivery of the Securities nor the application of the proceeds thereof by the Company will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

(gg) Broker/Dealer Relationships. Neither the Company nor any Subsidiary or any related entities (i) is required to register as a "broker" or "dealer" in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a "person associated with a member" or "associated person of a member" (within the meaning set forth in the FINRA Manual).

(hh) Fees. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Company with respect to the offer and sale of the Securities.

(ii) Investment Company. Neither the Company nor any Subsidiary is or, after giving effect to the offering and sale of the Securities pursuant to this Agreement and the Common Shares pursuant to the Initial Securities Purchase Agreement, will be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

(jj) Taxes. The Company and the Subsidiaries have filed all federal, state, local and foreign tax returns that have been required to be filed and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No tax deficiency has been determined adversely to the Company or any Subsidiary which has had, or would

reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company has no knowledge of any federal, state or other governmental tax deficiency, penalty or assessment which has been or might be asserted or threatened against it which could have a Material Adverse Effect.

(kk) No Improper Practices. (i) Neither the Company nor the Subsidiaries, nor to the Company's knowledge, any of their respective executive officers has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other Person charged with similar public or quasi-public duty in violation of any law or of the character required to be disclosed in the SEC Reports; (ii) no relationship, direct or indirect, exists between or among the Company or, to the Company's knowledge, the Subsidiaries or any Affiliate of any of them, on the one hand, and the directors, officers and stockholders of the Company or, to the Company's knowledge, the Subsidiaries, on the other hand, that is required by the Securities Act to be described in the SEC Reports that is not so described; (iii) there are no material outstanding loans or advances or material guarantees of indebtedness by the Company or, to the Company's knowledge, the Subsidiaries to or for the benefit of any of their respective officers or directors or any of the members of the families of any of them; (iv) the Company has not offered, or caused any placement agent to offer, Common Shares to any Person with the intent to influence unlawfully (A) a customer or supplier of the Company or the Subsidiaries to alter the customer's or supplier's level or type of business with the Company or the Subsidiaries or (B) a trade journalist or publication to write or publish favorable information about the Company or the Subsidiaries or any of their respective products or services, and, (v) neither the Company nor the Subsidiaries nor, to the Company's knowledge, any employee or agent of the Company or the Subsidiaries has made any payment of funds of the Company or the Subsidiaries or received or retained any funds in violation of any law, rule or regulation (including, without limitation, the Foreign Corrupt Practices Act of 1977), which payment, receipt or retention of funds is of a character required to be disclosed in the SEC Reports.

(ll) Operations. The operations of the Company and the Subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions to which the Company or the Subsidiaries are subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "*Money Laundering Laws*"), except as would not reasonably be expected to result in a Material Adverse Effect; and no action, suit or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(mm) OFAC. Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or Person acting on behalf of the Company or any of its Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("*OFAC*"); and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any of its subsidiaries or any joint venture partner or other Person or entity, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

(nn) U.S. Real Property Holdings Corporation. The Company is not and has never been a U.S. real property holding corporation, within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(oo) Compliance Program. The Company has established and administers a compliance program applicable to the Company, to assist the Company and the directors, officers and employees of the Company in complying with applicable regulatory guidelines (including, without limitation, those administered by the FDA, the EMA, and any other foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA or EMA); except where such noncompliance would not reasonably be expected to have a Material Adverse Effect.

(pp) Clinical Studies. All animal and other preclinical studies and clinical trials currently being conducted by the Company or on behalf of the Company are, to the Company's knowledge, being conducted in all material respects in compliance with all Applicable Laws and in accordance with experimental protocols, procedures and controls generally used by qualified experts in the preclinical study and clinical trials of new drugs and biologics as applied to comparable products to those being developed by the Company, and to the Company's knowledge there are no other clinical trials or preclinical studies, the results of which reasonably call into question the clinical trial or preclinical study results described or referred to in the SEC Reports when viewed in the context in which such results are described, except such results as would not reasonably be expected to result in a Material Adverse Effect; and the Company has not received any written notices or correspondence from the FDA, the EMA, or any other domestic or foreign governmental agency requiring the termination or suspension of any preclinical studies or clinical trials conducted by or on behalf of the Company that are described in the SEC Reports or the results of which are referred to in the SEC Reports.

(qq) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising as such terms are defined in Regulation D.

(rr) Compliance with Rule 506. None of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale is disqualified from relying on Rule 506 for any of the reasons stated in Rule 506(d) in connection with the issuance and sale of the Securities to the Purchasers pursuant to this Agreement. The Company has exercised reasonable care, including without limitation, conducting a factual inquiry that is appropriate in light of the circumstances, into whether any such disqualification under Rule 506(d) exists, but has assumed the accuracy of the Purchasers' representations and warranties. The Company has furnished to each Purchaser, a reasonable time prior to the date hereof, a description in writing of any matters that would have triggered disqualification under Rule 506(d), in compliance with the disclosure requirements of Rule 506(e). The Company has exercised reasonable care, including without limitation, conducting a factual inquiry that is appropriate in light of the circumstances, into whether any such disqualification under Rule 506(d) would have existed and whether any disclosure is required to be made to the Purchasers under Rule 506(e). Any outstanding securities of the Company (of any kind or nature) that were issued in reliance on Rule 506 have been issued in compliance with Rule 506(d) and (e) and no party has any reasonable basis for challenging any such reliance on Rule 506 in connection therewith.

(ss) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Principal Trading Market or the ASX.

(tt) Certain Market Activities. Neither the Company, nor any Subsidiary, nor any of their respective directors, officers or controlling Persons has taken, directly or indirectly, any action designed, or that has constituted or would reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(uu) Application of Takeover Protections. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate or articles of incorporation, or federal or state law that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under this Agreement, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities. The execution, delivery and performance by the Company of the Transaction Agreements, and the issuance and sale by the Company of the Securities as contemplated hereby will not result in a change of control or the acceleration of any vesting or other rights or obligations under any agreement, contract, commitment, understanding or other arrangement between the Company or any Subsidiary and any other Person (including any benefit plans), other than as may have been waived pursuant to the Change of Control Waivers.

(vv) Listing and Maintenance Requirements. The Common Shares were registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to the knowledge of the Company, is likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not received notice from the Principal Trading Market to the effect that the Company is not in compliance with the listing or maintenance requirements of the Principal Trading Market. The Company is, and has no reason to believe that it will not upon issuance of the Securities and for the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. Subject to the receipt of Stockholder Approval, the issuance of the Securities hereunder does not contravene the rules of the Principal Trading Market or the ASX.

(ww) Use of Proceeds. The Company shall use the proceeds from the sale of the Securities for working capital purposes and to fund the launch of the Company's product candidates and products, including, but not limited to, any product candidates and products acquired in the Icon Acquisition.

3.2 Representations and Warranties of the Purchasers. Each Purchaser hereby, severally and not jointly, represents and warrants to, and agrees with the Company that as of the date of this Agreement and as of the Closing Date, unless such representation, warranty or agreement specifies a different date or time as follows:

(a) Organization; Authority. Such Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate or partnership power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by such Purchaser and performance by such Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate or, if such Purchaser is not a corporation, such partnership, limited liability company or other applicable similar action, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof,

will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(b) No Conflicts. The execution, delivery and performance by such Purchaser of the Transaction Documents and the consummation by such Purchaser of the transactions contemplated hereby and thereby will not result in a violation of the organizational documents of such Purchaser.

(c) Investment Intent. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to, or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities laws, *provided, however*, that by making the representations herein, such Purchaser does not agree to hold any of the Securities for any minimum period of time and reserves the right, subject to the provisions of this Agreement and the Second Registration Rights Agreement, at all times to sell or otherwise dispose of all or any part of such Securities pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities laws. Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business. Such Purchaser does not presently have any agreement, plan or understanding, directly or indirectly, with any Person to distribute or effect any distribution of any of the Securities (or any securities which are derivatives thereof) to or through any Person or entity; such Purchaser is not a registered broker-dealer under Section 15 of the Exchange Act.

(d) Purchaser Status. Such Purchaser is, an "accredited investor" as defined in Rule 501(a) under the Securities Act. Such Purchaser hereby represents that neither it nor any of its Rule 506(d) Related Parties is a "bad actor" within the meaning of Rule 506(d) promulgated under the Securities Act. For purposes of this Agreement, "*Rule 506(d) Related Party*" shall mean a Person or entity covered by the "Bad Actor disqualification" provision of Rule 506(d) of the Securities Act.

(e) General Solicitation. Such Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general advertisement.

(f) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters such that it is capable of evaluating the merits and risks of the prospective investment in the Securities. Such Purchaser is able to bear the economic risk of an investment in the Securities and is able to afford a complete loss of such investment.

(g) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and the Subsidiaries and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of such Purchaser or its representatives or counsel shall modify, amend or affect such Purchaser's right to rely on the truth, accuracy and completeness of the Disclosure Materials and the Company's representations and warranties contained in the Transaction Documents.

(h) Independent Investment Decision. Such Purchaser understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Purchaser in connection with the purchase of the Securities constitutes legal, tax, accounting or investment advice. Such Purchaser has consulted such legal, tax, accounting and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities.

(i) Reliance on Exemptions. Such Purchaser understands that the Securities being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire the Securities.

(j) Regulation M. Such Purchaser is aware that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of Common Shares and other activities with respect to the Common Shares by the Purchasers.

(k) Residency. Such Purchaser's residence (if an individual) or offices in which its investment decision with respect to the Securities was made (if an entity) are located at the address immediately below such Purchaser's name on its signature page hereto.

(l) Brokers and Finders. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Company for any brokers or finders commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Purchaser.

ARTICLE IV
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) Compliance with Laws. Except as specifically provided for elsewhere in this Article IV, each Purchaser covenants that the Securities may be disposed of only pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act, or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with any applicable state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, (iii) pursuant to Rule 144 (*provided* that the Purchaser provides the Company with reasonable assurances (in the form of seller and, if applicable, broker representation letters) that the securities may be sold pursuant to such rule) or (iv) in connection with a bona fide pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company and the Transfer Agent, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act.

(b) Legends. Certificates evidencing the Securities shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form, until such time as they are not required under Section 4.1(c):

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER THE SECURITIES ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge, and/or grant a security interest in, some or all of the legended Securities in connection with applicable securities laws, pursuant to a bona fide margin agreement in compliance with a bona fide margin loan. Such a pledge would not be subject to approval or consent of the Company and no legal opinion of legal counsel to the pledgee, secured party or pledgor shall be required in connection with the pledge, but such legal opinion shall be required in connection with a subsequent transfer or foreclosure following default by the Purchaser transferee of the pledge. No notice shall be required of such pledge, but Purchaser's transferee shall promptly notify the Company of any such subsequent transfer or foreclosure. Each Purchaser acknowledges that the Company shall not be responsible for any pledges relating to, or the grant of any security interest in, any of the Securities or for any agreement, understanding or arrangement between any Purchaser and its pledgee or secured party. At the applicable Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder. Each Purchaser acknowledges and agrees that, except as otherwise provided in Section 4.1(c), any Securities subject to a pledge or security interest as contemplated by this Section 4.1(b) shall continue to bear the legend set forth in this Section 4.1(b) and be subject to the restrictions on transfer set forth in Section 4.1(a). Notwithstanding any provision in this Agreement to the contrary, each Purchaser shall comply with the Company's Securities Trading Policy to the extent that such policy is applicable to such Purchaser by its terms with respect to the prohibition under such policy on holding any securities of the Company in a margin account or otherwise pledging securities of the Company as collateral for a loan during any period of time that a Purchaser Designee is a member of the Board of Directors.

(c) Removal of Legends.

(i) The legend set forth in Section 4.1(b) above shall be removed and the Company shall issue a certificate without such legend or any other legend to the holder of the applicable Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at the DTC, if (i) such Securities are registered for resale under the Securities Act pursuant to an effective registration statement , (ii) such Securities are sold or transferred pursuant to and in compliance with Rule 144, or (iii) such Securities are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such

securities and without volume or manner-of-sale restrictions and are not being held by an Affiliate of the Company. Following the earlier of (i) the effective date of a Registration Statement or (ii) Rule 144 becoming available for the resale of the Securities, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Securities and without volume or manner-of-sale restrictions and the Securities are not held by an Affiliate of the Company, the Company shall cause Company Counsel to issue to the Transfer Agent the legal opinion referred to in the Irrevocable Transfer Agent Instructions. Any fees (with respect to the Transfer Agent, Company Counsel or otherwise) associated with the issuance of such opinion or the removal of such legend shall be borne by the Company. Following the date on which a Registration Statement is first declared effective by the Commission, or at such earlier time as a legend is no longer required for certain Securities in accordance with this Agreement, the Company will no later than two (2) Trading Days following the delivery by a Purchaser to the Company (with notice to the Company) of a legended certificate representing Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer), and an opinion of counsel to the extent required by Section 4.1(a), deliver or cause to be delivered to such Purchaser a certificate representing such Securities that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4.1(c). Certificates for Securities subject to legend removal hereunder may be transmitted by the Transfer Agent to the Purchasers by crediting the account of the Purchaser's prime broker with DTC as directed by such Purchaser.

(ii) The Company agrees that following such time as the legend is no longer required in accordance with this Agreement, it will, no later than two (2) Trading Days following the delivery by a Purchaser to the Transfer Agent of a (i) certificate representing Securities issued with a restrictive legend if such Securities are certificated, or (ii) written notice requesting the removal of any restrictive legend from the entry in the applicable balance account evidencing such Securities, as the case may be, deliver or cause to be delivered to such Purchaser such Securities, free from all restrictive and other legends, by crediting the account of the Purchaser's prime broker with DTC System as directed by such Purchaser. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Article IV.

(d) Irrevocable Transfer Agent Instructions. The Company shall issue the Irrevocable Transfer Agent Instructions to the Transfer Agent. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 4.1(d) (or instructions that are consistent therewith) will be given by the Company to the Transfer Agent in connection with this Agreement, and that the Securities shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement and the other Transaction Documents and applicable law. The Company acknowledges that a breach by it of its obligations under this Section 4.1(d) may cause irreparable harm to a Purchaser. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 4.1(d) may be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 4.1(d), that a Purchaser shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

(e) Transfer to Affiliates. Notwithstanding any other provision of this Article IV to the contrary, no registration statement or opinion of counsel shall be required for a transfer of the Securities by a Purchaser to an Affiliate of such Purchaser so long as the transferee of such Securities is an "accredited investor" and agrees to be subject to the terms hereof to the same extent as transferor in its capacity as a Purchaser herein.

4.2 Furnishing of Information. In order to enable the Purchasers to sell the Securities under Rule 144, until such time as no Purchaser holds Securities, the Company shall timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. During such twelve (12) month period, if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchasers and make publicly available in accordance with Rule 144(c) such information as is required for the Purchasers to sell the Securities under Rule 144.

4.3 Integration. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities to the Purchasers, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

4.4 Securities Laws Disclosure; Publicity. By 9:00 A.M., New York City time, on the Trading Day immediately following the date hereof, the Company shall issue a press release (the "Press Release"), reasonably acceptable to the Purchasers, disclosing all material terms of the transactions contemplated hereby. On or before 9:00 A.M., New York City time, on the second Trading Day immediately following the execution of this Agreement, the Company will file a Current Report on Form 8-K with the Commission describing the terms of the Transaction Documents, the Icon Acquisition and the Debt Financing (and including as exhibits to such Current Report on Form 8-K the material Transaction Documents (including, without limitation, this Agreement and the Second Registration Rights Agreement)). Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser or an Affiliate of any Purchaser, or include the name of any Purchaser or an Affiliate of any Purchaser in any press release or filing with the Commission (other than the Registration Statement) or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed, except (i) as required by federal securities law or the rules or regulations of the Trading Market, including in connection with (A) any registration statement contemplated by the Second Registration Rights Agreement and (B) the filing of final Transaction Documents (including signature pages thereto) with the Commission and (ii) to the extent such disclosure is required by law, request of the Staff of the Commission or Trading Market regulations, in which case the Company shall provide the Purchasers with two days prior written notice, if permitted under applicable law or the rules or regulation of the Trading Market of such disclosure permitted under this subclause (ii). From and after the issuance of the Press Release, no Purchaser shall be in possession of any material, non-public information received from the Company, any Subsidiary or any of their respective officers, directors, employees or agents, that is not disclosed in the Press Release unless a Purchaser shall have executed a written agreement regarding the confidentiality and use of such information. Each Purchaser, severally and not jointly with the other Purchasers covenants that until such time as the transactions contemplated by this Agreement are required to be publicly disclosed by the Company as described in this Section 4.4, such Purchaser will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

4.5 Indemnification of Purchasers.

(a) Subject to the provisions of this Section 4.5, the Company will indemnify and hold each Purchaser and its directors, officers, stockholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding

a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, stockholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling Persons (each, a "*Purchaser Party*") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against a Purchaser in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser (including any derivative action brought by any stockholder on behalf of the Company), with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser may have with any such stockholder or any violations by the Purchaser of state or federal securities laws or any conduct by such Purchaser which constitutes fraud, gross negligence, willful misconduct or malfeasance).

(b) Promptly after receipt by any Purchaser Party (the "*Indemnified Person*") of notice of any action, Proceeding or investigation in respect of which indemnity may be sought pursuant to this Section 4.5, such Indemnified Person shall promptly notify the Company in writing and the Company shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Person, and shall assume the payment of all reasonable fees and expenses; *provided*, *however*, that the failure of any Indemnified Person so to notify the Company shall not relieve the Company of its obligations hereunder, except to the extent that the Company is actually and materially prejudiced by such failure to notify. In any such Proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless: (i) the Company and the Indemnified Person shall have mutually agreed to the retention of such counsel; (ii) the Company shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Person in such Proceeding; or (iii) in the reasonable judgment of counsel to such Indemnified Person, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel and local counsel and shall pay such fees and expenses as incurred. The Company shall not be liable to any Indemnified Person under this Agreement for any settlement of any Proceeding effected by the Indemnified Person without the Company's written consent, which consent shall not be unreasonably withheld, delayed or conditioned, *provided*, *however*, that if at any time an Indemnified Person shall have requested the Company to reimburse such Indemnified Person for fees and expenses of counsel as contemplated by this Section 4.5, and the Company has not reimbursed such Indemnified Party for such expenses within thirty (30) days, the Company agrees that it shall be liable for any settlement of any proceeding effected without its written consent. Without the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld, delayed or conditioned, the Company shall not effect any settlement, compromise, or consent to the entry of judgement in any pending or threatened action, suit or Proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement, compromise or consent includes an unconditional release of such Indemnified Person from any and all liability arising out of such Proceeding and does not include any statement as to or any findings of fault, culpability or failure to act by or on behalf of any Indemnified Person. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.6 Company as Indemnitor of First Resort. The Company hereby acknowledges that a Purchaser Party may have certain rights to indemnification, advancement of expenses or insurance, provided by Purchasers and certain of its affiliates (other than the Company and its subsidiaries, collectively, the "*Fund Indemnitors*"). In the event that any Purchaser Party is made a party to or a participant in any Proceeding, to the extent resulting from any claim based on a Purchaser Party's service to the Company as a director or other fiduciary of the Company, then the Company shall (i) be an indemnitor of first resort (i.e., its obligations to such Purchaser Party are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Purchaser Party are secondary), (ii) be required to advance reasonable expenses incurred by such Purchaser Party, and (iii) be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement, the Delaware General Corporation Law, and any provision of the Company's bylaws or Certificate of Incorporation, as amended (or any other agreement between the Company and Purchaser), without regard to any rights such Purchaser Party may have against the Fund Indemnitors. The Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Fund Indemnitors on behalf of a Purchaser Party with respect to any claim for which such Purchaser Party has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Purchaser Party against the Company. The Fund Indemnitors are third party beneficiaries of the terms of this Section 4.6.

4.7 Principal Trading Market Listing. In the time and manner required by the Principal Trading Market, the Company shall prepare and file with such Principal Trading Market an additional shares listing application covering all of the Purchased Shares and Warrant Shares and shall use its commercially reasonable efforts to take all steps necessary to cause all of the Purchased Shares and Warrant Shares to be approved for listing on the Principal Trading Market as promptly as possible thereafter. The Company shall comply with the rules and regulations of the ASX with respect to the issuance and sale of the Purchased Shares and Warrant Shares.

4.8 Form D; Blue Sky. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to the Purchasers. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Purchasers under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification) and shall provide evidence of such actions promptly upon the written request of any Purchaser.

4.9 Board Designee.

(a) Director Designation Rights. Subject to Nasdaq Listing Rule 5640 (the "*Voting Rights Rule*") and in the event that the EW Purchasers purchase at least an aggregate of fifty percent (50%) of the Units offered by the Company pursuant to this Agreement at the Closing, for so long as the EW Purchasers (and their Affiliates) beneficially own Common Shares, including any outstanding Warrant Shares, the EW Purchasers shall be entitled to designate for recommendation by the Governance and Nominating Committee of the Board of Directors pursuant to Section 4.9(c) and, upon such recommendation, nomination by the Board of Directors, one (1) director from time to time as set forth below (any individual designated by the EW Purchasers, the "*Purchaser Designee*"). For the avoidance of doubt, the EW Purchasers shall not be entitled to designate any Purchaser Designee pursuant to this Section 4.9(a) if at any time such designation would violate the Voting Rights Rule, after consultation

with Nasdaq. Notwithstanding the foregoing, each Purchaser Designee must be reasonably acceptable to the Governance and Nominating Committee of the Board of Directors and the Board of Directors. The EW Purchasers may not assign the rights set forth in this Section 4.9(a) without the prior written consent of the Company. For the avoidance of doubt, the EW Purchasers' right to designate a Purchaser Designee hereunder is in addition to the EW Purchasers' right to designate a director for the Board of Directors pursuant to Section 4.9 of the Initial Securities Purchase Agreement. In the event that Nasdaq informs the Company that it is not in compliance with the Voting Rights Rule as a result of the EW Purchaser's rights under this Section 4.9(a), each EW Purchaser shall cooperate with the Company to promptly remedy such non-compliance, including relinquishing its right to a Purchaser Designee hereunder.

(b) Initial Purchaser Designee. Immediately following the Closing, the size of the Board of Directors shall be 7 members and the Board of Directors shall appoint Dr. Göran Ando as the initial Purchaser Designee (the "*Initial Purchaser Designee*") to fill a vacancy on the Board of Directors with a term expiring at the Company's next annual meeting of stockholders.

(c) Compliance with Nominating Guidelines. Each Purchaser Designee, including the Initial Purchaser Designee, shall comply with the requirements of the charter for, and related guidelines of, the Governance and Nominating Committee of the Board of Directors.

(d) Additional Obligations. The Company agrees to take all necessary actions to cause (i) the individual designated in accordance with Section 4.9(a), and subject to the provisions of Section 4.9(c), to be included in the slate of nominees to be elected to the Board of Directors at the next annual or special meeting of stockholders of the Company at which directors are to be elected, in accordance with the Company's certificate of incorporation, bylaws and Delaware General Corporation Law, and at each annual meeting of stockholders of the Company thereafter at which such director's term expires, and to recommend that the Company's stockholders vote affirmatively for each such nominee and (ii) the individual designated in accordance with Section 4.9(e) to fill the applicable vacancy of the Board of Directors, in accordance with the Company's certificate of incorporation, bylaws, Delaware General Corporation Law, all applicable securities laws and the Principal Trading Market's rules, regulations and standards.

(e) Vacancies of Purchaser Designee. In the event that a vacancy is created at any time by the death, disability, retirement, resignation or removal of the Purchaser Designee, the Company shall take at any time and from time to time all necessary action to cause the vacancy created thereby to be filled in accordance with the terms hereof as promptly as practicable by a new Purchaser Designee designated by the EW Purchasers to the Board of Directors seat that has become vacant.

(f) Waiver of Corporate Opportunities. In recognition that the Purchasers and Purchaser Designee currently have and will in the future have, or will consider, investments in numerous companies with respect to which Purchasers, Purchaser Designee or another Purchaser Party may serve as an advisor, a director or in some other capacity, and in recognition that Purchasers, Purchaser Designee and other Purchaser Parties have myriad duties to various investors and partners, and in anticipation that the Company and its Subsidiaries, on the one hand, and the Purchaser, Purchaser Designee and any other Purchaser Party, on the other hand, may engage in the same or similar activities or lines of business and have an interest in the same areas of corporate opportunities, and in recognition of the benefits to be derived by the Company hereunder and in recognition of the difficulties which may confront any advisor who desires and endeavors fully to satisfy such advisor's duties in determining the full scope of such duties in any particular situation, the provisions of this Section 4.9(f) are set forth to regulate, define and guide the conduct of certain affairs of the Company as they may involve the Purchasers, Purchaser Designee or Purchaser Party, and, except as the Purchasers and Purchaser Designee may otherwise agree in writing after the date hereof:

(i) the Purchasers, Purchaser Designee and any Purchaser Party will have the right: (A) to directly or indirectly engage in any business (including, without limitation, any business activities or lines of business that are the same as or similar to those pursued by, or competitive with, the Company and its Subsidiaries), (B) to directly or indirectly do business with any client or customer of the Company and its Subsidiaries, (C) to take any other action that the Purchaser, Purchaser Designee or Purchaser Party believes in good faith is necessary to or appropriate to fulfill its obligations as described in the first sentence of this Section 4.9(f) to third parties and (D) not to communicate or present potential transactions, matters or business opportunities to the Company or any of its Subsidiaries, and to pursue, directly or indirectly, any such opportunity for itself, and to direct any such opportunity to another Person or entity; and

(ii) the Purchasers, Purchaser Designee and any Purchaser Party will have no duty (contractual or otherwise) to communicate or present any corporate opportunities to the Company or any of its Affiliates or to refrain from any actions specified in the preceding paragraph, and the Company, on its own behalf and on behalf of its Affiliates, hereby renounces and waives any right to require the Purchaser, Purchaser Designee or any Purchaser Party to act in a manner inconsistent with the provisions of this Section 4.9(f).

(g) Benefits. During the period that a Purchaser Designee is a director of the Board of Directors, such director shall be entitled to the same benefits, including benefits under any director and officer indemnification or insurance policy maintained by the Company, as any other non-employee director of the Board of Directors.

4.10 Company Lock-Up. During the period beginning from the date hereof and continuing to and including the earlier of (a) the Closing Date and (b) the date of the Company's first meeting of stockholders at which the Company does not obtain Stockholder Approval (the "*Lock Up Period*"), the Company agrees that it will not offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose, except as provided hereunder, of any securities of the Company that are substantially similar to the Common Shares, including but not limited to any options or warrants to purchase Common Shares or any securities that are convertible into or exchangeable for, or that represent the right to receive, Common Shares or any such substantially similar securities; *provided*, *however*, that the Company may, without the consent of the Purchasers, (i) effect the transactions contemplated pursuant to this Agreement and the Initial Securities Purchase Agreement; (ii) issue the Warrants and the SWK Warrant and the Common Shares issuable upon exercise thereof, (iii) issue Common Shares or options or stock units to purchase Common Shares, or issue Common Shares upon exercise of options or settlement of stock units, pursuant to any stock option, stock unit agreement, stock bonus, employee stock purchase or other stock plan or arrangement described in the SEC Reports; (iv) issue Common Shares pursuant to the conversion or exchange of convertible or exchangeable securities outstanding as of the date of this Agreement; (v) file a registration statement on Form S-8 to register Common Shares issuable pursuant to the terms of a stock option, stock bonus, employee stock purchase or other stock incentive plan or arrangement described in the SEC Reports; (vi) issue Common Shares in connection with any joint venture, commercial or collaborative relationship or the acquisition or license by the Company of the securities, businesses, property or other assets of another Person or entity which do not principally involve capital raising; provided, however, that in the case of clause (vi), such Common Shares shall not in the aggregate exceed 5% of the Company's outstanding Common Shares on a fully diluted basis after giving effect to the sale of the Securities contemplated by this Agreement; (vii) file the Registration Statement and the First Registration Statement in connection with this Agreement and the Initial Securities Purchase Agreement; and (viii) assist any stockholder of the Company in the establishment of a trading plan by such stockholder pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Common Shares, provided that such plan does not provide for the transfer of Common Shares during the Lock Up Period, and the establishment of such plan does not require or otherwise result in any public filings or other public announcement of such plan during such Lock Up Period and such plan is otherwise permitted to be implemented during the Lock Up Period pursuant to the terms of the Lock Up Agreement between such Person and the Purchasers, if any.

4.11 Stockholder Approval. The Company shall use its best efforts to file a preliminary proxy statement with the SEC no later than thirty (30) days after the First Closing, for the purpose of obtaining Stockholder Approval. The Company shall use its best efforts to hold a special meeting of its stockholders (which may also be the annual meeting of stockholders) at the earliest practical date after the date hereof, but in no event later than ninety (90) days after the First Closing for the purpose of obtaining Stockholder Approval, with the recommendation of the Board of Directors that such proposals are approved, and the Company shall solicit proxies from its stockholders in connection therewith in the same manner as all other management proposals in such proxy statement and all management-appointed proxyholders shall vote their proxies in favor of such proposal. If the Company does not obtain Stockholder Approval at the first meeting held for such purpose, upon the written request of the EW Purchasers, the Company shall use its best efforts to call another meeting of stockholders within six (6) months of the first meeting of stockholders held pursuant to this Section 4.11.

4.12 Reservation of Purchased Shares and Warrant Shares. Upon receipt of Stockholder Approval, the Company shall maintain a reserve free of pre-emptive rights, of a number of Common Shares equal to the number of Purchased Shares and the minimum number of Warrant Shares issuable pursuant to the exercise of the Warrants in such amount as may then be required to fulfill its obligations in full under the Warrants.

ARTICLE V
CONDITIONS PRECEDENT TO CLOSING

5.1 Conditions Precedent to the Obligations of the Purchasers to Purchase Securities. The obligation of each Purchaser to purchase Securities at the Closing is subject to the fulfillment to such Purchaser's satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by such Purchaser (as to itself only):

(a) Representations and Warranties. The representations and warranties of the Company contained herein shall be true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties shall be true and correct) as of the date when made and as of the Closing Date, as though made on and as of such date, except for such representations and warranties that speak as of a specific date.

(b) Performance. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing.

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(d) Consents. The Company shall have obtained in a timely fashion any and all consents, permits, approvals, registrations and waivers necessary for consummation of the purchase and sale of the Securities, all of which shall be and remain so long as necessary in full force and effect.

(e) Stockholder Approval. The Company shall have obtained Stockholder Approval, which shall be deemed by the Company to be effective,

(f) Listing. The Principal Trading Market shall have approved the listing of additional shares application for the Purchased Shares and Warrant Shares.

(g) No Suspensions of Trading in Common Shares. The Common Shares shall not have been suspended, as of the Closing Date, by the Commission or the Principal Trading Market from trading on the Principal Trading Market nor shall suspension by the Commission or the Principal Trading Market have been threatened, as of the Closing Date, either (i) in writing by the Commission or the Principal Trading Market or (ii) by falling below the minimum listing maintenance requirements of the Principal Trading Market.

(h) Icon Acquisition. The Icon Acquisition shall have closed.

(i) Debt Financing. The Credit Agreement shall be in full force and effect and the Company shall be in compliance in all material respects with the covenants contained therein.

(j) Lock-Up Agreements. The Company shall deliver lock-up agreements in the form attached as Exhibit G hereto executed by each of the Company's directors and executive officers which are in full force and effect as of the date hereof and shall be in full force and effect as of the Closing Date.

(k) Change of Control Provisions. The Company shall have obtained written waivers pursuant to any agreement, contract, commitment, understanding or other arrangement between the Company or any Subsidiary and any other Person (including any benefit plans), including but not limited to, any option award agreements, restricted stock units award agreements and employment agreements, to the extent the issuance of Securities as contemplated by this Agreement and the Initial Securities Purchase Agreement would result in the acceleration of such vesting or other rights or obligations therein or constitute a change of control thereunder (the "*Change of Control Waivers*").

(l) Company Deliverables. The Company shall have delivered the Company Deliverables in accordance with Section 2.2(a).

(m) Termination. This Agreement shall not have been terminated as to such Purchaser in accordance with Section 6.17 herein.

5.2 Conditions Precedent to the Obligations of the Company to sell Securities. The Company's obligation to sell and issue the Securities at the Closing to the Purchasers is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions, any of which may be waived by the Company:

(a) Representations and Warranties. The representations and warranties made by the Purchasers in Section 3.2 hereof shall be true and correct in all material respects (except for those representations and warranties which are qualified as to materiality, in which case such representations and warranties shall be true and correct) as of the date when made, and as of the Closing Date as though made on and as of such date, except for representations and warranties that speak as of a specific date.

(b) Performance. Such Purchaser shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by such Purchaser at or prior to the Closing Date.

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(d) Listing. The Principal Trading Market shall have approved the listing of additional shares application for the Purchased Shares and Warrant Shares.

(e) Termination. This Agreement shall not have been terminated as to such Purchaser in accordance with Section 6.17 herein.

(f) Purchasers Deliverables. Each Purchaser shall have delivered its Purchaser Deliverables in accordance with Section 2.2(b).

ARTICLE VI
MISCELLANEOUS

6.1 Fees and Expenses. The Company and the Purchasers shall each pay the fees and expenses of their respective advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party in connection with the negotiation, preparation, execution, delivery and performance of the Transaction Documents, the Initial Securities Purchase Agreement and the First Registration Rights Agreement; *provided*, *however*, that the Company shall reimburse the EW Purchasers for all reasonable fees and expenses of the EW Purchasers incurred by the EW Purchasers in connection with the Transaction Documents, the Initial Securities Purchase Agreement and the First Registration Rights Agreement and the transactions contemplated hereby and thereby, including fees and expenses related to due diligence, consultants, and the legal fees and expenses of counsel to the Purchasers in an amount not to exceed $400,000 in the aggregate, of which amount, up to $200,000 shall be payable on the Closing and up to $200,000 shall have been paid upon the closing of the Initial Investment. The foregoing reimbursement obligations are intended to be identical to (and not in addition to) the reimbursement obligations set forth in the Initial Securities Purchase Agreement. The Company shall pay all Transfer Agent fees, stamp taxes and other taxes and duties levied in connection with the sale and issuance of the Securities to the Purchasers hereunder.

6.2 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, and the Initial Securities Purchase Agreement and the First Registration Rights Agreement, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company and the Purchasers will execute and deliver to the other such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

6.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via electronic mail or facsimile (provided the sender receives a machine-generated confirmation of successful transmission) at the e-mail address or facsimile number specified in this Section 6.3 prior to 5:00 P.M., New York City time, on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via electronic mail or facsimile at the email address or facsimile number specified in this Section 6.3 on a day that is not a Trading Day or later than 5:00 P.M., New York City time, on any

Trading Day, (c) the Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service with next day delivery specified, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as follows:

If to the Company:

pSivida Corp.
480 Pleasant Street
Watertown, Massachusetts 02472
Telephone No.: (617) 916-5000
Facsimile No.: (617) 926-5050
Attention: John D. Mercer
Email: jmercer@psivida.com

With a copy to:

Hogan Lovells
1735 Market Street
23rd Floor
Philadelphia, PA 19103
Telephone No.: 267-675-4671
Facsimile No.: 267-675-4601
Attention: Steven J. Abrams
E-mail: steve.abrams@hoganlovells.com

If to a Purchaser:

To the address set forth under such Purchaser's name on the signature page hereof; or such other address as may be designated in writing hereafter, in the same manner, by such Person.

With a copy to:

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022
Telephone No.: 212-549-0408
Facsimile No.: 212-521-5450
Attention: Mark G. Pedretti
E-mail: mpedretti@reedsmith.com

6.4 Amendments; Waivers; No Additional Consideration. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchasers holding a majority of the Purchased Shares and Warrant Shares, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

6.5 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any of the Transaction Documents.

6.6 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns. The Company may not assign this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the Purchasers holding a majority of the Purchased Shares and Warrant Shares. Any Purchaser may assign its rights hereunder in whole or in part to any Person to whom such Purchaser assigns or transfers any Securities in compliance with the Transaction Documents and applicable law, provided such transferee shall agree in writing to be bound, with respect to the transferred Securities, by the terms and conditions of this Agreement that apply to the "Purchasers".

6.7 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.6.

6.8 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the New York Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

6.9 Survival. Subject to applicable statute of limitations, the representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery of the Securities.

6.10 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

6.11 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

6.12 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company and the Transfer Agent of such loss, theft or destruction and the execution by the holder thereof of a customary lost certificate affidavit of that fact and an agreement to indemnify and hold harmless the Company and the Transfer Agent for any losses in connection therewith or, if required by the Transfer Agent, a bond in such form and amount as is required by the Transfer Agent. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities. If a replacement certificate or instrument evidencing any Securities is requested due to a mutilation thereof, the Company may require delivery of such mutilated certificate or instrument as a condition precedent to any issuance of a replacement.

6.13 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Purchasers will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by the Purchasers by reason of any breach of obligations contained in this Agreement and hereby agree to waive and not assert in any action for specific performance of any such obligation (other than in connection with any action for a temporary restraining order) the defense that a remedy at law would be adequate.

6.14 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

6.15 Adjustments in Share Numbers and Prices. In the event of any stock split, subdivision, dividend or distribution payable in shares of Common Shares (or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly shares of Common Shares), combination or other similar recapitalization or event occurring after the date hereof and prior to the Closing, each reference in any Transaction Document to a number of shares or a price per share shall be deemed to be amended to appropriately account for such event.

6.16 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under any Transaction Document. The decision of each Purchaser to purchase Securities pursuant to the Transaction Documents has been made by such Purchaser independently of any other Purchaser and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company or any Subsidiary which may have been made or given by any other Purchaser or by any agent or employee of any other Purchaser, and no Purchaser and any of its agents or employees shall have any liability to any other Purchaser (or any other Person) relating to or arising from any such

information, materials, statement or opinions. Nothing contained herein or in any Transaction Document, and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser acknowledges that no other Purchaser has acted as agent for such Purchaser in connection with making its investment hereunder and that no Purchaser will be acting as agent of such Purchaser in connection with monitoring its investment in the Securities or enforcing its rights under the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents.

6.17 Termination. This Agreement may be terminated and the sale and purchase of the Securities abandoned at any time prior to the Closing by either the Company or any Purchaser (with respect to itself only) upon written notice to the other, if the Closing has not been consummated on or prior to 5:00 P.M., New York City time, on December 31, 2018. Nothing in this Section 6.17 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents. In the event of a termination pursuant to this Section 6.17, the Company shall promptly notify all non-terminating Purchasers. Upon a termination in accordance with this Section 6.17, the Company and the terminating Purchaser(s) shall not have any further obligation or liability (including arising from such termination) to the other, except as provided in Section 4.5, Section 4.6 and Section 6.1, and no Purchaser will have any liability to any other Purchaser under the Transaction Documents as a result therefrom.

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IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

COMPANY:

pSivida Corp.

By: /s/ Nancy Lurker
Name: Nancy Lurker
Title: President and Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

NAME OF PURCHASER:

EW Healthcare Partners L.P.

By: Essex Woodlands Fund IX-GP, L.P.
Its: General Partner

By: Essex Woodlands IX, LLC
Its: General Partner

By: /s/ Ronald W. Eastman
Name: Ronald W. Eastman
Title: Manager

Aggregate Purchase Price (Subscription Amount): $21,469,278.75

Number of Securities to be Acquired: _____

Tax ID No.: *[separately provided]*

Address for Notice:

21 Waterway Avenue, Suite 225
The Woodlands, TX 77380

Telephone No.: (281) 364-1555

Facsimile No.: (281) 364-9755

E-mail Address: rkolodziejcyk@ewhv.com

Attention: Richard Kolodziejcyk, Chief Financial Officer

Delivery Instructions (if different than above):

c/o _____

Street: _____

City/State/Zip: _____

Attention: _____

Telephone No.: _____

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

NAME OF PURCHASER:

EW Healthcare Partners-A L.P.

By: Essex Woodlands Fund IX-GP, L.P.
Its: General Partner

By: Essex Woodlands IX, LLC
Its: General Partner

By: /s/ Ronald W. Eastman
Name: Ronald W. Eastman
Title: Manager

Aggregate Purchase Price (Subscription Amount): $863,764.85

Number of Securities to be Acquired: _____

Tax ID No.: *[separately provided]*

Address for Notice:

21 Waterway Avenue, Suite 225
The Woodlands, TX 77380

Telephone No.: (281) 364-1555

Facsimile No.: (281) 364-9755

E-mail Address: rkolodziejcyk@ewhv.com

Attention: Richard Kolodziejcyk, Chief Financial Officer

Delivery Instructions (if different than above):

c/o _____

Street: _____

City/State/Zip: _____

Attention: _____

Telephone No.: _____

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

NAME OF PURCHASER:

Mark J Foley and Dana Foley Trustees of the Foley Family Trust U/A DTD 4/10/02

By: /s/ Mark J. Foley
Name: Mark J. Foley
Title: Trustee

Aggregate Purchase Price (Subscription Amount): $3,200,000

Number of Securities to be Acquired: _____

Tax ID No.: *[separately provided]*

Address for Notice:

_____

Telephone No.: _____

Facsimile No.: _____

E-mail Address: _____

Attention: _____

Delivery Instructions:
(if different than above)

c/o _____

Street: _____

City/State/Zip: _____

Attention: _____

Telephone No.: _____

Schedule 3.1(h)

1. pSivida US, Inc.
2. pSiMedica Limited
3. pSivida Securities Corporation
4. Icon Bioscience, Inc. (as of the effective time of the Icon Acquisition)

Schedule 3.1(k)

Common Stock (as of March 28, 2018):

120,000,000 shares authorized

45,303,593 shares issued and outstanding

Preferred Stock (as of March 28, 2018):

5,000,000 shares authorized

No shares issued and outstanding

EXHIBITS:

A: Form of Warrant
B. Second Registration Rights Agreement
C: Form of Irrevocable Transfer Agent Instructions
D: Form of Secretary's Certificate
E: Form of Officer's Certificate
F: Accredited Investor Questionnaire
G: Form of Lock-up Agreement

EXHIBIT A

FORM OF WARRANT

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

PSIVIDA CORP.

Warrant Shares: _____

Initial Exercise Date: _____, 201__
Issue Date: _____, 2018

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the Second Closing (the "Initial Exercise Date") and on or prior to the close of business on the fifteenth (15th) Business Day following the date on which the Holder receives written notice from the Company that the Centers for Medicare & Medicaid Services has announced that a new C-Code has been established for Dexycu™ and will be effective at the start of the first calendar quarter after such notice (the "Termination Date"), but not thereafter, to subscribe for and purchase from pSivida Corp., a Delaware corporation (the "Company"), up to _____ shares of common stock, par value $0.001 per share (the "Common Shares"), of the Company (as subject to adjustment hereunder, the "Warrant Shares"). The purchase price of one Common Share under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement, dated as of March 28, 2018, among the Company and the purchasers signatory thereto (the "Second Securities Purchase Agreement").

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency that the Company may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of

a duly executed facsimile copy or PDF copy submitted by electronic (or e-mail attachment) of the Notice of Exercise in the form annexed hereto. Within the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per Warrant Share under this Warrant shall be equal to the lower of (i) $1.43, (a thirty percent (30%) premium to the Initial Purchase Price), or (ii) a 20% discount to the VWAP of the Common Shares on the Principal Trading Market for the twenty (20) Trading Days immediately prior to the exercise of this Warrant; provided that in no event shall the exercise price per Warrant Share be lower than $0.88, (a twenty percent (20%) discount to the Initial Purchase Price), subject to adjustment hereunder (the "Exercise Price").

"VWAP" shall mean, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Shares are then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Shares for such date (or the nearest preceding date) on the Trading Market on which the Common Shares are then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)) or (b) in all other cases, the fair market value of a share of Common Shares as determined by an independent appraiser selected in good faith and mutually agreed upon between the Company and the Holder, the fees and expenses of which shall be paid by the Company.

c) Cashless Exercise. This Warrant may not be exercised, in whole or in part, by means of a "cashless exercise".

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. Warrant Shares purchased hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price is received within the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. Subject to the Company's receipt of the aggregate Exercise Price for the Warrant Shares subject to a Notice of Exercise, if the Company fails for any reason to deliver to the Holder the Warrant Shares subject to such Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Shares on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Shares as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. Subject to the Company's receipt of the aggregate Exercise Price for the Warrant Shares subject to such Notice of Exercise, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, Common Shares to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the Common Shares so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of Warrant Shares that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Shares having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of Warrant Shares with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Warrant Shares upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its shareholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on its Common Shares or any other equity or equity equivalent securities payable in Common Shares (which, for avoidance of doubt, shall not include any Common Shares issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding Common Shares into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding Common Shares into a smaller number of shares or (iv) issues by reclassification of Common Shares any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of Common Shares (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of Common Shares outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that

the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Share equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Shares (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of Common Shares acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the grant, issue or sale of such Purchase Rights.

c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of its Common Shares, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of Common Shares acquirable upon complete exercise of this Warrant immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the participation in such Distribution. To the extent that this Warrant has not been partially or completely exercised at the time of such Distribution, such portion of the Distribution shall be held in abeyance for the benefit of the Holder until the Holder has exercised this Warrant.

d) Treatment Upon an Acquisition.

i. In the event of an Acquisition (as defined below) prior to the Termination Date (other than, for the purposes of this provision, an Acquisition consummated by way of an unsolicited third-party offer), the Company shall use its best efforts to ensure that lawful and adequate provision shall be made whereby each Holder shall thereafter continue to have the right to subscribe for Common Shares in lieu of the Warrant Shares issuable upon exercise of the Warrants held by such Holder, such number of shares, where the value of each new warrant to purchase one share in the surviving or acquiring entity ("Acquirer") is determined in accordance with the Black-Scholes Option Pricing formula set forth in Appendix (A) hereto, that is equivalent to the aggregate value of the

Warrants held by such Holder, where the value of each Warrant to purchase one Common Share in the Company is determined in accordance with the Black-Scholes Option Pricing formula set forth Appendix (B) hereto. Furthermore, the new warrants to purchase shares in the Acquirer referred to herein shall have the same expiration date as the Warrants, and shall have a strike price, K_{Acq}, that is calculated in accordance with Appendix (A) hereto. For the avoidance of doubt, if the Acquirer surviving or acquiring entity, as the case may be, is a member of a consolidated group for financial reporting purposes, the "Acquirer" shall be deemed to be the parent of such consolidated group for purposes of this Section 3(d) and Appendix (A) hereto.

ii. Moreover, appropriate provision shall be made with respect to the rights and interests of each Holder to the end that the provisions hereof (including, without limitation, provision for adjustment of the Exercise Price) shall thereafter be applicable, as nearly equivalent as may be practicable in relation to any shares thereafter deliverable upon the exercise thereof. The Company shall not effect any such Acquisition unless prior to or simultaneously with the consummation thereof the successor corporation resulting from such consolidation or merger, or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume by written instrument, reasonably deemed by the Board of Directors of the Company and the Holder to be satisfactory in form and substance, the obligation to deliver to the holder of the Warrants, at the last address of such holder appearing on the books of the Company, such shares of stock, as, in accordance with the foregoing provisions, such holder may be entitled to purchase, and the other obligations under these Warrants. The provisions of this Section 3(d) shall similarly apply to successive Acquisitions.

iii. If the Company, in spite of using its commercially reasonable efforts, is unable to cause these Warrants to continue in full force and effect until the expiration of the Termination Date in connection with any Acquisition, then the Company shall pay the Holders an amount per Warrant to purchase one Common Share that is calculated in accordance with the Black-Scholes Option Pricing formula set forth in Appendix (B) hereto (the "Black-Scholes Value"). Such payment shall be made in cash in the event that the Acquisition results in the shareholders of the Company receiving cash from the Acquirer at the closing of the transaction, and shall be made in shares of the Company (with the value of each Common Share determined according to S_{Corp} in Appendix (B) hereto) in the event that the Acquisition results in the shareholders of the Company receiving shares in the Acquirer or other entity at the closing of the transaction. In the event that the shareholders of the Company receive both cash and shares at the closing of the transaction, such payment to the Holders shall also be made in both cash and shares in the same proportion as the consideration received by the shareholders. Following any payment required pursuant to this 3(d)(iii), the Warrant shall terminate, without payment of any additional consideration therefor.

iv. Notwithstanding the foregoing, in the event that, as a result of the Acquisition, the Warrants will be exercisable for anything other than shares or securities that are listed on a United States national securities exchange, the Holder shall be entitled to demand to receive a cash payment in an amount equal to the Black-Scholes Value per Warrant (calculated in accordance with Appendix B attached hereto) contemporaneously with or promptly after the consummation of such Acquisition. Following any such demand, the Warrant shall terminate, without payment of any consideration other than the Black-Scholes Value therefor, effective upon the payment of such amount.

v. "Acquisition" means any of the following: (i) any sale, lease, license, transfer, conveyance or other disposition of all or substantially all of the assets of the Company; (ii) any reorganization, consolidation, merger, demerger or sale of shares of the Company (including, without limitation, a public tender offer for the shares in the Company) where the holders of the Company's outstanding shares as of immediately before the transaction (or series of related transactions) beneficially own less than a majority by voting powers of the outstanding shares of the surviving or successor entity as of immediately after the transaction; or (iii) the acquisition by any "person" (together with such person's Affiliates) or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) acquires, directly or indirectly, the beneficial ownership (as such term is defined in Rule 13d-3 promulgated under the Exchange Act) of outstanding shares of capital stock and/or other equity securities of the Company, in a single transaction or series of related transactions (including, without limitation, one or more tender offers or exchange offers), representing at least 50% of the voting power of or economic interests in the then outstanding shares of capital stock of the Company. Notwithstanding the foregoing, the term Acquisition shall not include the Common Shares, including the Warrant Shares, purchased by the holder pursuant to that certain Securities Purchase Agreement by and among the Company and the purchasers signatory thereto dated as of March 28, 2018 and the Second Securities Purchase Agreement.

e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of Common Shares deemed to be issued and outstanding as of a given date shall be the sum of the number of Common Shares (excluding treasury shares, if any) issued and outstanding.

f) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on its Common Shares, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Shares, (C) the Company shall authorize the granting to all holders of Common Shares rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any shareholders of the Company shall be required in connection with any reclassification of the Common Shares, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Shares are converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Shares of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Shares of record shall be entitled to exchange their Common Shares for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. Subject to the provisions of Section 4.1 of the Purchase Agreement and applicable securities law, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. If, at the time of a transfer, the Warrant Shares have not been registered pursuant to an effective registration statement, then, prior to any such transfer, the transferee shall deliver a written statement to the Company that such transferee is an "accredited investor as defined in Rule 501(a) promulgated under the Securities Act. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Issue Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

Section 5. Miscellaneous.

a) No Rights as Shareholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a shareholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Shares a sufficient number of Common Shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Shares may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase

in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents as may be necessary to enable the Company to perform its obligations under this Warrant.

e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered will be subject to restriction upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that all rights hereunder terminate on the Termination Date. If the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Warrant Shares or as a shareholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the holders of a majority of the Warrant Shares underlying the then outstanding warrants issued under the Second Securities Purchase Agreement. Any amendment effected in the accordance with the foregoing shall be binding on all Warrants and holders thereof.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

PSIVIDA CORP.

By: _____
Name:
Title:

NOTICE OF EXERCISE

TO: **PSIVIDA CORP.**

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) The Holder intends that payment of the aggregate Exercise Price shall be made as follows:

A Cash Exercise pursuant to subsection 2(b) with respect to _____ Warrant Shares for an aggregate Exercise Price of $_____ (equal to $ per Warrant Share)

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

(4) Accredited Investor. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity:

_____

Signature of Authorized Signatory of Investing Entity:

_____

Name of Authorized Signatory:

_____

Title of Authorized Signatory:

Date: _____

EXHIBIT B

ASSIGNMENT FORM

1. *(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

2. FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____ ___, _____

Holder's Signature: _____

Holder's Address: _____

APPENDIX A

Black-Scholes Option Pricing formula to be used when calculating the value of each new warrant to purchase one share in the Acquirer shall be:

$C_{Acq} = S_{Acq}e^{-l}(TAcq-tAcq)N(d_1) – K_{Acq}e^{-r(TAcq-tAcq)}N(d_2)$, where

C_{Acq} = value of each warrant to purchase one share in the Acquirer

S_{Acq} = price of Acquirer's stock as determined by reference to the average of the closing prices on the securities exchange or Nasdaq over the 20-day period ending three trading days prior to the closing of the Acquisition described in Section 3(d) if the Acquirer's stock is then traded on such exchange or system, or the average of the closing bid or sale prices (whichever is applicable) in the over-the-counter market over the 20-day period ending three trading days prior to the closing of the Acquisition if the Acquirer's stock is then actively traded in the over-the-counter market, or the then most recently completed financing if the Acquirer's stock is not then traded on a securities exchange or system or in the over-the-counter market.

T_{Acq} = expiration date of new warrants to purchase shares in the Acquirer = **T_{Corp}**

t_{Acq} = date of issue of new warrants to purchase shares in the Acquirer

T_{Acq}-t_{Acq} = time until warrant expiration, expressed in years

s = volatility = annualized standard deviation of daily log-returns (using a 262-day annualization factor) of the Acquirer's stock price on the securities exchange or Nasdaq over a 20-day trading period, determined by the Warrant Holders, that is within the 100-day trading period ending on the trading day immediately after the public announcement of the Acquisition described in Section 3(d) if the Acquirer's stock is then traded on such exchange or system, or the annualized standard deviation of daily-log returns (using a 262-day annualization factor) of the closing bid or sale prices (whichever is applicable) in the over-the-counter market over a 20-day trading period, determined by the Warrant Holder, that is within the 100-day trading period ending on the trading day immediately after the public announcement of the Acquisition if the Acquirer's stock is then actively traded in the over-the-counter market, or 0.5 (or 50%) if the Acquirer's stock is not then traded on a securities exchange or system or in the over-the-counter market. In no event will the volatility variable be more than 0.5 (or 50%).

N = cumulative normal distribution function

$d_1 = (\ln(S_{Acq}/K_{Acq}) + (r-l+s^2/2)(T_{Acq}-t_{Acq})) \div (s\sqrt{(T_{Acq}-t_{Acq})})$

ln = natural logarithm

l = dividend rate of the Acquirer for the most recent 12-month period at the time of closing of the Acquisition.

K_{Acq} = strike price of new warrants to purchase shares in the Acquirer = **$K_{Corp} * (S_{Acq} / S_{Corp})$**

r = annual yield, as reported by Bloomberg at time t_{Acq}, of the United States Treasury security measuring the nearest time T_{Acq}

$d_2 = d_1 - s\sqrt{(T_{Acq}-t_{Acq})}$

APPENDIX B

Black-Scholes Option Pricing formula to be used when calculating the value of each Warrant to purchase one Common Share in the Company shall be:

$C_{Corp} = S_{Corp}e^{-l}(TCorp-tCorp)N(d_1) – K_{Corp}e^{-r(TCorp-tCorp)}N(d_2)$, where

C_{Corp} = value of each Warrant to purchase one Common Share in the Company

S_{Corp} = price of Company stock as determined by reference to the average of the closing prices on Nasdaq over the 20-day period ending three trading days prior to the closing of the Acquisition if the Company's stock is then traded on Nasdaq, or the average of the closing bid or sale prices (whichever is applicable) in the over-the-counter market over the 20-day period ending three trading days prior to the closing of the Acquisition if the Company's stock is then actively traded in the over-the-counter market, or on the AIM market, if the Company's stock is not then traded on a securities exchange or system or in the over-the-counter market, or the most recently completed financing if the Company's stock is not then traded on AIM.

T_{Corp} = expiration date of Warrants to purchase shares in the Company

t_{Corp} = date of public announcement of transaction

T_{Corp}-t_{Corp} = time until Warrant expiration, expressed in years

s = volatility = the annualized standard deviation of daily log-returns (using a 262-day annualization factor) of the Company's stock price on the securities exchange or Nasdaq Global Select Market over a 20-day trading period, determined by the Warrant Holders, that is within the 100-day trading period ending on the trading day immediately after the public announcement of the Acquisition if the Company's stock is then traded on such exchange or system, or the annualized standard deviation of daily-log returns (using a 262-day annualization factor) of the closing bid or sale prices (whichever is applicable) in the over-the-counter market over a 20-day trading period, determined by the Warrant Holder, that is within the 100-day trading period ending on the trading day immediately after the public announcement of the Acquisition if the Company's stock is then actively traded in the over-the-counter market, or 0.5 (or 50%) if the Company's stock is not then traded on a securities exchange or system or in the over-the-counter market. In no event will the volatility variable be more than 0.5 (or 50%).

N = cumulative normal distribution function

$d_1 = (\ln(S_{Corp}/K_{Corp}) + (r-l+s^2/2)(T_{Corp}-t_{Corp})) \div (s\sqrt{(T_{Corp}-t_{Corp})})$

ln = natural logarithm

l = dividend rate of the Company for the most recent 12-month period at the time of closing of the Acquisition.

K_{Corp} = strike price of Warrant

r = annual yield, as reported by Bloomberg at time t_{Corp}, of the United States Treasury security measuring the nearest time T_{Corp}

d_2 = d1- $s\sqrt{(T_{Corp}-t_{Corp})}$

EXHIBIT B

FORM OF SECOND REGISTRATION RIGHTS AGREEMENT

This SECOND REGISTRATION RIGHTS AGREEMENT (as it may be amended from time to time in accordance with the terms hereof, the "Agreement"), dated as of _____, 2018, is made by and among pSivida Corp., a Delaware corporation (the "Company") and EW Healthcare Partners, L.P., EW Healthcare Partners-A, L.P. and each other Person identified on the signature pages hereto as an "Investor" (together with their Permitted Transferees that become party hereto, the "Investors").

RECITALS

WHEREAS, pursuant to the Second Securities Purchase Agreement dated as of March [•], 2018, by and among the Company and the Investors (the "Second Securities Purchase Agreement"), the Company will issue and sell to the Investors, subject to the terms and conditions set forth therein, units consisting of (a) an aggregate of _____ shares of Common Stock and (b) warrants to purchase an aggregate of _____ shares of Common Stock (the "Warrants").

WHEREAS, the execution and delivery of this Agreement by the Company is a condition precedent to closing of transactions contemplated by the Second Securities Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

EFFECTIVENESS

Section 1.1 Effectiveness. This Agreement shall become effective upon the closing of the transactions contemplated by the Second Securities Purchase Agreement (the "Closing").

ARTICLE 2

DEFINITIONS

Section 2.1 Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Second Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Adverse Disclosure" means public disclosure of material non-public information that, in the good faith judgment of the board of directors of the Company: (i) would be required to be made in any Registration Statement filed with the SEC by the Company so that such Registration Statement, from and after its effective date, does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such Registration Statement; and (iii) the Company has a bona fide business purpose for not disclosing publicly.

"Affiliate" means, with respect to any specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person or (b) in the event that the specified Person is a natural Person, a Member of the Immediate Family of such Person; provided that the Company and each of its subsidiaries shall be deemed not to be Affiliates of any Investor. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning set forth in the preamble.

"Business Day" means any day except Saturday, Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Closing" has the meaning set forth in the recitals.

"Common Stock" means the common stock of the Company, par value $0.001 per share.

"Company" has the meaning set forth in the preamble.

"Credit Agreement" means that certain Credit Agreement, dated as of March [•], 2018, among the Company, SWK Funding LLC, as agent, sole lead arranger and sole bookrunner, and the financial institutions party thereto from time to time as lenders.

"Debt Financing" means the transactions contemplated by the Credit Agreement.

"Demand Registration" shall have the meaning set forth in Section 3.1.1(a).

"Demand Registration Request" shall have the meaning set forth in Section 3.1.1(a).

"Demand Registration Statement" shall have the meaning set forth in Section 3.1.1(c).

"Demand Suspension" shall have the meaning set forth in Section 3.1.5.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"FINRA" means the Financial Industry Regulatory Authority.

"First Securities Purchase Agreement" means that certain securities purchase agreement by and among the Company and the investors signatory thereto dated as of March __, 2018.

"Investors" has the meaning set forth in the preamble and shall include any Additional Purchasers as such term is defined in the Second Securities Purchase Agreement, provided that any Additional Purchaser shall execute counterpart signature pages to this Agreement and any such Additional Purchaser, will, upon delivery to the Company of such signature pages, become parties to, and bound by, this Agreements to the same extent as if they had been Purchasers on the date of the Second Securities Purchase Agreement.

"Issuer Free Writing Prospectus" means an issuer free writing prospectus, as defined in Rule 433 under the Securities Act, relating to an offer of the Registrable Securities.

"Loss" shall have the meaning set forth in Section 3.9.1.

"Member of the Immediate Family" means, with respect to any Person who is an individual, (a) each parent, spouse (but not including a former spouse or a spouse from whom such Person is legally separated) or child (including those adopted) of such individual and (b) each trustee, solely in his or her capacity as trustee, for a trust naming only one or more of the Persons listed in sub-clause (a) as beneficiaries.

"Permitted Transferee" means any Affiliate of any Investor.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Piggyback Notice" shall have the meaning set forth in Section 3.3.1.

"Piggyback Registration" shall have the meaning set forth in Section 3.3.1.

"Prospectus" means (i) the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments and supplements, and all other material incorporated by reference in such prospectus, and (ii) any Issuer Free Writing Prospectus.

"Public Offering" means the offer and sale of the Company's equity securities for cash pursuant to an effective Registration Statement under the Securities Act (other than a Registration Statement on Form S-4 or Form S-8 or any successor form).

"Registrable Securities" means (i) all shares of Common Stock held by the Investors, (ii) all shares of Common Stock issuable upon exercise, conversion or exchange of any option, warrant (including the Warrants) or convertible security not then subject to vesting or forfeiture to the Company and (iii) all shares of Common Stock directly or indirectly issued or then issuable with respect to the securities referred to in clauses (i) or (ii) above by way of a stock dividend or stock split, or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (w) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such Registration Statement, (x) such securities shall have been Transferred pursuant to Rule 144, (y) such holder is able to immediately sell such securities under Rule 144 without any restrictions on transfer (including without application of paragraphs (c), (d), (e), (f) and (h) of Rule 144), as reasonably determined by the Investor, or (z) such securities shall have ceased to be outstanding.

"Registration" means registration under the Securities Act of the offer and sale to the public of any Registrable Securities under a Registration Statement. The terms "register", "registered" and "registering" shall have correlative meanings.

"Registration Expenses" shall have the meaning set forth in Section 3.8.

"Registration Statement" means any registration statement of the Company filed with, or to be filed with, the SEC under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement other than a registration statement (and related Prospectus) filed on Form S-4 or Form S-8 or any successor form thereto.

"Representatives" means, with respect to any Person, any of such Person's officers, directors, employees, agents, attorneys, accountants, actuaries, consultants, equity financing partners or financial advisors or other Person associated with, or acting on behalf of, such Person.

"Rule 144" means Rule 144 under the Securities Act (or any successor rule).

"SEC" means the Securities and Exchange Commission or any successor agency having jurisdiction under the Securities Act.

"Second Securities Purchase Agreement" has the meaning set forth in the recitals.

"Securities Act" means the Securities Act of 1933, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"Selling Stockholder Information" shall have the meaning set forth in Section 3.9.1.

"Shelf Period" shall have the meaning set forth in Section 3.2.2.

"Shelf Registration" shall have the meaning set forth in Section 3.2.1(a).

"Shelf Registration Statement" shall have the meaning set forth in Section 3.2.1(a).

"Shelf Suspension" shall have the meaning set forth in Section 3.2.3.

"Shelf Takedown Request" shall have the meaning set forth in Section 3.2.4(a).

"SWK Warrants" means the warrants to purchase shares of Common Stock issued in connection with the Debt Financing.

"Transfer" means, with respect to any Registrable Security, any interest therein, or any other securities or equity interests relating thereto, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation or other encumbrance or other disposition thereof, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise. "Transferred" shall have a correlative meaning.

"Underwritten Public Offering" means an underwritten Public Offering, including any bought deal or block sale to a financial institution conducted as an underwritten Public Offering.

"Underwritten Shelf Takedown" means an Underwritten Public Offering pursuant to an effective Shelf Registration Statement.

"Warrants" has the meaning set forth in the recitals.

"WKSI" means any Securities Act registrant that is a well-known seasoned issuer as defined in Rule 405 under the Securities Act at the most recent eligibility determination date specified in paragraph (2) of that definition.

Section 2.2 Other Interpretive Provisions. (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "hereof", "herein", "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and any subsection and section references are to this Agreement unless otherwise specified.

(c) The term "including" is not limiting and means "including without limitation."

(d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(e) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

ARTICLE 3

REGISTRATION RIGHTS

The Company will perform and comply, and cause each of its subsidiaries to perform and comply, with such of the following provisions as are applicable to it. Each Investor will perform and comply with such of the following provisions as are applicable to such Investor.

Section 3.1 Demand Registration.

Section 3.1.1 Request for Demand Registration.

(a) At any time, but subject to the net proceeds limitations in Section 3.1.1(b), the Investors holding a majority of the then outstanding Registrable Securities shall have the right to make a written request from time to time (a "Demand Registration Request") to the Company for Registration of all or part of the Registrable Securities held by such Investors and any other Investor. Any such Registration pursuant to a Demand Registration Request shall hereinafter be referred to as a "Demand Registration."

(b) Each Demand Registration Request shall specify (x) the kind and aggregate amount of Registrable Securities to be registered, provided that the anticipated net proceeds from the Registrable Securities to be registered by all Investors must be at least $5,000,000, and (y) the intended method or methods of disposition thereof.

(c) Upon receipt of a Demand Registration Request, the Company shall as promptly as practicable file a Registration Statement (a "Demand Registration Statement") relating to such Demand Registration, and use its commercially reasonable efforts to cause such Demand Registration Statement to be promptly declared effective under the Securities Act.

Section 3.1.2 Limitation on Demand Registrations. The Company shall not be obligated to take any action to effect any Demand Registration if a Demand Registration was declared effective, the Investors withdraw their request pursuant to Section 3.1.3 or an Underwritten Shelf Takedown requested by the Investors was consummated within the preceding ninety (90) days.

Section 3.1.3 Demand Withdrawal. The Investors may withdraw all or any portion of their Registrable Securities included in a Demand Registration from such Demand Registration at any time prior to the effectiveness of the applicable Demand Registration Statement. Upon receipt of a notice to such effect from the Investor or Investors holding an aggregate of at least a majority of the then outstanding Registrable Securities with respect to all of their Registrable Securities included in such Demand Registration, the Company shall cease all efforts to secure effectiveness of the applicable Demand Registration Statement.

Section 3.1.4 Effective Registration. The Company shall use commercially reasonable efforts to cause the Demand Registration Statement to become effective and remain effective for not less than one hundred eighty (180) days (or such shorter period as will terminate when all Registrable Securities covered by such Demand Registration Statement have been sold or withdrawn), or, if such Demand Registration Statement relates to an Underwritten Public Offering, such longer period as in the opinion of counsel for the underwriter or underwriters a Prospectus is required by law to be delivered in connection with sales of Registrable Securities by an underwriter or dealer.

Section 3.1.5 Delay in Filing; Suspension of Registration. If the filing, initial effectiveness or continued use of a Demand Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Investors, delay the filing or initial effectiveness of, or suspend use of, the Demand Registration Statement (a "Demand Suspension"); provided, however, that the Company shall not be permitted to exercise a Demand Suspension more than once during any twelve (12)-month period for a period not to exceed sixty (60) days. In the case of a Demand Suspension, the Investors shall suspend use of the applicable Prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Investors in writing upon the termination of any Demand Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the Investors such numbers of copies of the Prospectus as so amended or supplemented as the Investors may reasonably request. The Company shall, if necessary, supplement or amend the Demand Registration

Statement, if required by the registration form used by the Company for the Demand Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Investor.

Section 3.2 Shelf Registration.

Section 3.2.1 Request for Shelf Registration.

(a) The Company shall, within thirty (30) days of the date of the Closing, file with the SEC a shelf Registration Statement pursuant to Rule 415 under the Securities Act ("Shelf Registration Statement") relating to the offer and sale of Registrable Securities held by the Investors from time to time hereunder and under the First Registration Rights Agreement (but only to the extent such securities have not been registered pursuant to the First Registration Rights Agreement) in accordance with the methods of distribution elected by the Investors, and the Company shall use its commercially reasonable efforts to cause such Shelf Registration Statement to promptly become effective under the Securities Act, but in no event later than sixty (60) days after filing such Shelf Registration Statement. Any such Registration pursuant to this Section 3.2.1(a) shall hereinafter be referred to as a "Shelf Registration."

(b) If on the date of the Closing, the Company is not a WKSI, then the Investors shall submit a written notice to the Company specifying the aggregate amount of Registrable Securities to be registered, which shall not be less than a majority of the then outstanding Registrable Securities held by the Investors. The Company shall provide to the Investors the information necessary to determine the Company's status as a WKSI upon request.

Section 3.2.2 Continued Effectiveness. The Company shall use its commercially reasonable efforts to keep such Shelf Registration Statement continuously effective under the Securities Act in order to permit the Prospectus forming part of the Shelf Registration Statement to be usable by an Investor until the earlier of: (i) the date as of which all Registrable Securities have been sold pursuant to the Shelf Registration Statement or another Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder); and (ii) the date as of which the Investors no longer hold Registrable Securities (such period of effectiveness, the "Shelf Period"). Subject to Section 3.2.4, the Company shall be deemed not to have used its commercially reasonable efforts to keep the Shelf Registration Statement effective during the Shelf Period if the Company voluntarily takes any action or omits to take any action that would result in the Investors not being able to offer and sell any Registrable Securities pursuant to such Shelf Registration Statement during the Shelf Period, unless such action or omission is required by applicable law.

Section 3.2.3 Suspension of Registration. If the continued use of such Shelf Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Investors, suspend use of the Shelf Registration Statement (a "Shelf Suspension"); provided, however, that the Company shall not be permitted to exercise a Shelf Suspension more than one time during any twelve (12)-month period for a period not to exceed sixty (60) days. In the case of a Shelf Suspension, the Investors agree to suspend use of the applicable Prospectus in connection with

any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Investors in writing upon the termination of any Shelf Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the Investors such numbers of copies of the Prospectus as so amended or supplemented as the Investors may reasonably request. The Company shall, if necessary, supplement or amend the Shelf Registration Statement, if required by the registration form used by the Company for the Shelf Registration Statement or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Investors.

Section 3.2.4 Shelf Takedown.

(a) At any time the Company has an effective Shelf Registration Statement with respect to the Investors' Registrable Securities, by notice to the Company specifying the intended method or methods of disposition thereof, the Investors may make a written request (a "Shelf Takedown Request") to the Company to effect a Public Offering, including an Underwritten Shelf Takedown, of all or a portion of the Investors' Registrable Securities that may be registered under such Shelf Registration Statement, and as soon as practicable the Company shall amend or supplement the Shelf Registration Statement as necessary for such purpose.

(b) All determinations as to whether to complete any Underwritten Shelf Takedown and as to the timing, manner, price and other terms of any Underwritten Shelf Takedown contemplated by this Section 3.2.4 shall be determined by the Investors.

(c) The Company shall not be obligated to take any action to effect any Underwritten Shelf Takedown if (x) the anticipated net proceeds from the Registrable Securities to be sold are not at least $5,000,000, or (y) a Demand Registration was declared effective or an Underwritten Shelf Takedown requested by the Investors was consummated within the preceding ninety (90) days.

Section 3.3 Piggyback Registration.

Section 3.3.1 Participation. If the Company at any time proposes to file a Registration Statement under the Securities Act or to conduct a Public Offering under an effective Shelf Registration Statement with respect to any offering of its equity securities for its own account or for the account of any other Persons (other than (i) a Registration under Sections 3.1 or 3.2, (ii) a Registration on Form S-4 or Form S-8 or any successor form to such forms or (iii) a Registration of securities solely relating to an offering and sale to employees or directors of the Company or its subsidiaries pursuant to any employee stock plan or other employee benefit plan arrangement), then, as soon as practicable (but in no event less than ten (10) Business Days prior to the proposed date of filing of such Registration Statement or, in the case of a Public Offering under a Shelf Registration Statement, the anticipated pricing or trade date), the Company shall give written notice (a "Piggyback Notice") of such proposed filing or Public Offering to the Investors, and such Piggyback Notice shall offer the Investors the opportunity to register under such Registration Statement such number of Registrable Securities as the Investors

may request in writing, or to sell in such Public Offering up to such number of Registrable Securities that are included in the Shelf Registration Statement for such Public Offering or under a Shelf Registration Statement filed pursuant to Section 3.2, (a "Piggyback Registration"). The Investors must notify the Company of the number of Registrable Securities that they are requesting to be included in the Registration Statement within five (5) Business Days after receipt by the Investor of the Piggyback Notice. Subject to Section 3.3.2, the Company shall include in such Registration Statement or in such Public Offering as applicable, all such Registrable Securities that are requested to be included therein within five (5) Business Days after receipt by the Investor of any such Piggyback Notice; provided, however, that if at any time after giving written notice of its intention to register or sell any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, or the pricing or trade date of a Public Offering under a Shelf Registration Statement, the Company determines for any reason not to register or sell or to delay the Registration or sale of such securities, the Company shall give written notice of such determination to the Investors and, thereupon, (i) in the case of a determination not to register or sell, shall be relieved of its obligation to register or sell any Registrable Securities in connection with such Registration or Public Offering (but not from its obligation to pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of any Investor to request that such Registration or sale be effected as a Demand Registration under Section 3.1 or an Underwritten Shelf Takedown under Section 3.2, as the case may be, and (ii) in the case of a determination to delay Registration or sale, in the absence of a request for a Demand Registration or an Underwritten Shelf Takedown, as the case may be, shall be permitted to delay registering or selling any Registrable Securities, for the same period as the delay in registering or selling such other securities as reasonably determined by the Company. The Investors shall have the right to withdraw all or part of their request for inclusion of its Registrable Securities in a Piggyback Registration by giving written notice to the Company of its request to withdraw.

Section 3.3.2 Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed offering of Registrable Securities included in a Piggyback Registration informs the Company and the Investors in writing that, in its or their opinion, the aggregate number of securities that the Investors and any other Persons intend to include in such offering exceeds the number that can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Registration shall be (i) first, one hundred percent (100%) of the securities that the Company proposes to sell, and (ii) second, and only if all the securities referred to in clause (i) have been included, the number of the Investors' Registrable Securities and the registrable securities of any Person included in such Piggyback Registration pursuant to the registration rights related to the First Securities Purchase Agreement on a pro rata basis that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect and (iii) third, and only if all of the Registrable Securities referred to in clause (ii) have been included in such Registration, any other securities eligible for inclusion in such Registration.

Section 3.3.3 No Effect on Other Registrations. No Registration of Registrable Securities effected pursuant to a request under this Section 3.3 shall be deemed to have been effected pursuant to Sections 3.1 and 3.2 or shall relieve the Company of its obligations under Sections 3.1 and 3.2.

Section 3.4 Lock-Up Agreements. In connection with each Registration or sale of Registrable Securities pursuant to Section 3.1, 3.2 or 3.3 conducted as an Underwritten Public Offering, the Company agrees to cause its directors and executive officers, if requested by the underwriters in any such Underwritten Public Offering, to become bound by and to execute and deliver a customary lock-up agreement with the underwriter(s) of such Underwritten Public Offering relating to the transfer of any equity securities of the Company held by such Person during the period commencing on the date of the final Prospectus relating to the Underwritten Public Offering and ending on the date specified by the underwriters (such period not to exceed ninety (90) days plus such additional period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on the publication or other distribution of research reports and analyst recommendations and opinions, if applicable).

Section 3.5 Registration Procedures.

Section 3.5.1 Requirements. In connection with the Company's obligations under Sections 3.1 through 3.4, the Company shall use its commercially reasonable efforts to effect such Registration and to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith the Company shall:

(a) As promptly as practicable prepare the required Registration Statement, including all exhibits and financial statements required under the Securities Act to be filed therewith and Prospectus, and, before filing a Registration Statement or Prospectus or any amendments or supplements thereto, (x) furnish to the underwriters, if any, and to the Investors, copies of all documents prepared to be filed, which documents shall be subject to the review of such underwriters and the Investors and their respective counsel, (y) make such changes in such documents concerning an Investor prior to the filing thereof as such Investor, or its counsel, may reasonably request and (z) except in the case of a Registration under Section 3.3 not file any Registration Statement or Prospectus or amendments or supplements thereto to which the Investors, in such capacity, or the underwriters, if any, shall reasonably object;

(b) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and supplements to the Prospectus as may be (x) reasonably requested by the Investors with Registrable Securities covered by such Registration Statement, (y) reasonably requested by any Investor (to the extent such request relates to information relating to such Investor), or (z) necessary to keep such Registration Statement effective for the period of time required by this Agreement, and comply with provisions of the applicable securities laws with respect to the sale or other disposition of all securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(c) notify the Investors and the managing underwriter or underwriters, if any, and (if requested) confirm such notice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Company (a) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, and when the applicable Prospectus or any amendment or supplement thereto has been filed, (b) of any written comments by the SEC, or any request by the SEC or other federal or state

governmental authority for amendments or supplements to such Registration Statement or such Prospectus, or for additional information (whether before or after the effective date of the Registration Statement) or any other correspondence with the SEC relating to, or which may affect, the Registration, (c) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or any order by the SEC or any other regulatory authority preventing or suspending the use of any preliminary or final Prospectus or the initiation or threatening of any proceedings for such purposes, (d) if, at any time, the representations and warranties of the Company in any applicable underwriting agreement cease to be true and correct in all material respects and (e) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(d) promptly notify the Investors and the managing underwriter or underwriters, if any, when the Company becomes aware of the happening of any event as a result of which the applicable Registration Statement or the Prospectus included in such Registration Statement (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus or any preliminary Prospectus, in light of the circumstances under which they were made) not misleading, when any Issuer Free Writing Prospectus includes information that may conflict with the information contained in the Registration Statement, or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement or Prospectus in order to comply with the Securities Act and, as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the Investors and the managing underwriter or underwriters, if any, an amendment or supplement to such Registration Statement or Prospectus, which shall correct such misstatement or omission or effect such compliance;

(e) to the extent the Company is eligible under the relevant provisions of Rule 430B under the Securities Act, if the Company files any Shelf Registration Statement, the Company shall include in such Shelf Registration Statement such disclosures as may be required by Rule 430B under the Securities Act (referring to the unnamed selling security holders in a generic manner) in order to ensure that any Investor may be added to such Shelf Registration Statement at a later time through the filing of a Prospectus supplement rather than a post-effective amendment;

(f) use its commercially reasonable efforts to prevent, or obtain the withdrawal of, any stop order or other order or notice preventing or suspending the use of any preliminary or final Prospectus;

(g) promptly incorporate in a Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment such information as the managing underwriter or underwriters, if any, and Investors agree should be included therein relating to the plan of distribution with respect to such Registrable Securities; and make all required filings of such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment;

(h) furnish to the Investors and each underwriter, if any, without charge, as many conformed copies as the Investors or such underwriter may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment or supplement thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(i) deliver to the Investors and each underwriter, if any, without charge, as many copies of the applicable Prospectus (including each preliminary Prospectus) and any amendment or supplement thereto and such other documents as the Investors or such underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities by the Investors or underwriter (it being understood that the Company shall consent to the use of such Prospectus or any amendment or supplement thereto by the Investors and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto);

(j) on or prior to the date on which the applicable Registration Statement becomes effective, use its commercially reasonable efforts to register or qualify, and cooperate with the Investors, the managing underwriter or underwriters, if any, and their respective counsel, in connection with the Registration or qualification of such Registrable Securities for offer and sale under the securities or "Blue Sky" laws of each state and other jurisdiction as any Investor or managing underwriter or underwriters, if any, or their respective counsel reasonably request in writing and do any and all other acts or things reasonably necessary or advisable to keep such Registration or qualification in effect for such period as required by Section 3.1 or Section 3.2, as applicable, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(k) cooperate with the Investors and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request prior to any sale of Registrable Securities to the underwriters;

(l) use its commercially reasonable efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Securities;

(m) make such representations and warranties to the Investors, and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in public offerings similar to the offering then being undertaken;

(n) enter into such customary agreements (including underwriting and indemnification agreements) and take all such other actions as the Investors or the managing underwriter or underwriters, if any, reasonably request in order to expedite or facilitate the Registration and disposition of such Registrable Securities;

(o) obtain for delivery to the Investors and to the underwriter or underwriters, if any, an opinion or opinions from counsel for the Company dated the most recent effective date of the Registration Statement or, in the event of an Underwritten Public Offering, the date of the closing under the underwriting agreement, in customary form, scope and substance, which opinions shall be reasonably satisfactory to the Investors or underwriters, as the case may be, and their respective counsel;

(p) in the case of an Underwritten Public Offering, obtain for delivery to the Company and the managing underwriter or underwriters, with copies to the Investors included in such Registration or sale, a comfort letter from the Company's independent registered public accounting firm (and, if necessary, any other independent registered public accounting firm of any subsidiary of the Company or any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement) in customary form and covering such matters of the type customarily covered by comfort letters as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(q) cooperate with each Investor selling Registrable Securities and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(r) use its commercially reasonable efforts to comply with all applicable securities laws and, if a Registration Statement was filed, make available to its security holders, as soon as reasonably practicable, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(s) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement;

(t) use its commercially reasonable efforts to cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of the Company's equity securities are then listed or quoted and on the Principal Trading Market;

(u) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by a representative appointed by the Investors, by any underwriter participating in any disposition to be effected pursuant to such Registration Statement and by any attorney, auditor or other agent retained by the Investors or any such underwriter, all pertinent financial and other records and pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees and the Company's independent registered public accounting firm which has certified its financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such Person in connection with such Registration Statement;

(v) in the case of an Underwritten Public Offering, cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters in any such offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto;

(w) take no direct or indirect action prohibited by Regulation M under the Exchange Act;

(x) take all reasonable action to ensure that any Issuer Free Writing Prospectus utilized in connection with any Registration complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related Prospectus, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(y) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities in accordance with the terms of this Agreement.

Section 3.5.2 Company Information Requests. The Company may require the Investors to furnish to the Company such information regarding the distribution of such securities and such other information relating to the Investors and their ownership of Registrable Securities as the Company may from time to time reasonably request in writing and the Company may exclude from such Registration or sale the Registrable Securities of each Investor who unreasonably fails to furnish such information within a reasonable time after receiving such request. Each Investor shall furnish such information to the Company and to cooperate with the Company as reasonably necessary to enable the Company to comply with the provisions of this Agreement.

Section 3.6 Underwritten Offerings.

Section 3.6.1 Shelf and Demand Registrations. If requested by the underwriters for any Underwritten Public Offering, pursuant to a registration or sale under Sections 3.1 or 3.2, the Company shall enter into an underwriting agreement with such underwriters, such agreement to be reasonably satisfactory in substance and form to each of the Company, the Investors and the underwriters, and to contain such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type, including indemnities no less favorable to the recipient thereof than those provided in Section 3.9 of this Agreement. Each Investor shall cooperate with the Company in the negotiation of the underwriting agreement and shall give consideration to the reasonable suggestions of the Company regarding the form thereof, and each Investor shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. No Investor shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Investor's title to the Registrable Securities, intended

method of distribution and any other representations to be made by such Investor as are generally prevailing in agreements of that type, and the aggregate amount of the liability of any Investor under such agreement shall not exceed such Investor's proceeds from the sale of their Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

Section 3.6.2 Piggyback Registrations. If the Company proposes to register or sell any of its securities under the Securities Act as contemplated by Section 3.3 and such securities are to be distributed through one or more underwriters, the Company shall, if requested by the Investors pursuant to Section 3.3 and, subject to the provisions of Section 3.3.2, use its commercially reasonable efforts to arrange for such underwriters to include on the same terms and conditions that apply to the other sellers in such Registration or sale all the Registrable Securities to be offered and sold by such Investors among the securities of the Company to be distributed by such underwriters in such Registration or sale. The Investors shall be party to the underwriting agreement between the Company and such underwriters and shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. No Investor shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Investor's title to the Registrable Securities, intended method of distribution and any other representations to be made by such Investor as are generally prevailing in agreements of that type, and the aggregate amount of the liability of any Investor shall not exceed such Investor's proceeds from the sale of its Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

Section 3.6.3 Selection of Underwriters; Selection of Counsel. In the case of an Underwritten Public Offering under Sections 3.1 or 3.2, the managing underwriter or underwriters to administer the offering shall be determined by the Investors holding at least a majority of the then outstanding Registrable Securities included in such registration. In the case of an Underwritten Public Offering under Section 3.3, the managing underwriter or underwriters to administer the offering shall be determined by the Company; provided that such underwriter or underwriters shall be reasonably acceptable to such Investors.

Section 3.7 No Inconsistent Agreements; Additional Rights. Neither the Company nor any of its subsidiaries shall hereafter enter into, and neither the Company nor any of its subsidiaries is currently a party to, any agreement with respect to its securities that is inconsistent with the rights granted to the Investors by this Agreement. Without approval of the Investors, neither the Company nor any of its subsidiaries shall enter into any agreement granting registration or similar rights to any Person (other than respect to registration rights granted pursuant to the First Registration Rights Agreement and the SWK Warrants), and the Company hereby represents and warrants that, as of the date hereof, no registration or similar rights have been granted to any other Person other than pursuant to this Agreement, the First Registration Rights Agreement and the SWK Warrants.

Section 3.8 Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement shall be paid by the Company, including (i) all registration and filing fees, and any other fees and expenses associated with filings required to

be made with the SEC or FINRA, (ii) all fees and expenses in connection with compliance with any securities or "Blue Sky" laws (including reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing Prospectuses), (iv) all fees and disbursements of counsel for the Company and of all independent registered public accounting firms of the Company and any subsidiaries of the Company (including the expenses of any special audit and comfort letters required by or incident to such performance), (v) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice, (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system, (viii) all reasonable fees and disbursements of one legal counsel for the Investors, (ix) any reasonable fees and disbursements of underwriters customarily paid by issuers or sellers of securities, (x) all fees and expenses of any special experts or other Persons retained by the Company in connection with any Registration or sale, (xi) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties) and (xii) all expenses related to the "road show" for any Underwritten Public Offering, including the reasonable out-of-pocket expenses of the Investors and underwriters, if so requested. All such expenses are referred to herein as "Registration Expenses". The Company shall not be required to pay any fees and disbursements to underwriters not customarily paid by the issuers of securities in an offering similar to the applicable offering, including underwriting discounts and commissions and transfer taxes, if any, attributable to the sale of Registrable Securities.

Section 3.9 Indemnification.

Section 3.9.1 Indemnification by the Company. The Company shall indemnify and hold harmless, to the full extent permitted by law, each Investor, each shareholder, member, limited or general partner of any Investor, each shareholder, member, limited or general partner of each such shareholder, member, limited or general partner, each of their respective Affiliates, officers, directors, shareholders, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons and each of their respective Representatives from and against any and all losses, penalties, judgments, suits, costs, claims, damages, liabilities and expenses, joint or several (including reasonable costs of investigation and legal expenses as incurred and any indemnity and contribution payments made to underwriters) (each, a "Loss" and collectively "Losses") arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which Registrable Securities are registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or any other disclosure document produced by or on behalf of the Company or any of its subsidiaries including any report and other document filed under the Exchange Act, (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading or (iii) any violation or alleged violation by the Company or any of its subsidiaries of any federal, state, foreign or common law rule or regulation

applicable to the Company or any of its subsidiaries and relating to action or inaction in connection with any such registration, disclosure document or other document or report; provided, that the Investors shall not be entitled to indemnification pursuant to this Section 3.9.1 in respect of any untrue statement or omission contained in any information relating to any Investor furnished in writing by such Investor to the Company specifically for inclusion in a Registration Statement and used by the Company in conformity therewith (such information "Selling Stockholder Information"). This indemnity shall be in addition to any liability the Company may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Investors or any indemnified party and shall survive the Transfer of such securities by any Investor and regardless of any indemnity agreed to in the underwriting agreement that is less favorable to the Investors. The Company shall also indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, their officers and directors and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above (with appropriate modification) with respect to the indemnification of the indemnified parties.

Section 3.9.2 Indemnification by the Investors. Each Investor shall (severally and not jointly) indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors and officers and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) from and against any Losses resulting from (i) any untrue statement of a material fact in any Registration Statement under which Registrable Securities were registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or (ii) any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading, in each case to the extent, but only to the extent, that such untrue statement or omission is contained in such Investor's Selling Stockholder Information. In no event shall the liability of any Investor hereunder be greater in amount than the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such indemnification obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by such Investor pursuant to Section 3.9.4 and any amounts paid by such Investor as a result of liabilities incurred under the underwriting agreement, if any, related to such sale.

Section 3.9.3 Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder only to the extent, if at all, that it forfeits substantive legal rights by reason of such delay or failure) and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (i) the indemnifying party has agreed in writing to pay such fees or expenses, (ii) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to

indemnification hereunder and employ counsel reasonably satisfactory to such Person, (iii) the indemnified party has reasonably concluded (based upon advice of its outside counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, or (iv) in the reasonable judgment of any such Person (based upon advice of its outside counsel) a conflict of interest may exist between such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If the indemnifying party assumes the defense, the indemnifying party shall not have the right to settle such action without the consent of the indemnified party, which shall not be unreasonably withheld, conditioned or delayed. No indemnifying party shall consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of an unconditional release from all liability in respect to such claim or litigation without the prior written consent of such indemnified party. If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its prior written consent, but such consent may not be unreasonably withheld, conditioned or delayed. It is understood that the indemnifying party or parties shall not, except as specifically set forth in this Section 3.9.3, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements or other charges of more than one separate firm admitted to practice in such jurisdiction at any one time unless (x) the employment of more than one counsel has been authorized in writing by the indemnifying party or parties, (y) an indemnified party has reasonably concluded (based on the advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other indemnified parties or (z) a conflict or potential conflict exists or may exist (based upon advice of counsel to an indemnified party) between such indemnified party and the other indemnified parties, in each of which cases the indemnifying party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

Section 3.9.4 Contribution. If for any reason the indemnification provided for in Section 3.9.1 and Section 3.9.2 is unavailable to an indemnified party or insufficient in respect of any Losses referred to therein (other than as a result of exceptions or limitations on indemnification contained in Section 3.9.1 and Section 3.9.2), then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party or parties on the other hand in connection with the acts, statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. In connection with any Registration Statement filed with the SEC by the Company, the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if contribution pursuant to this Section 3.9.4 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this

Section 3.9.4. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an indemnified party as a result of the Losses referred to in Sections 3.9.1 and 3.9.2 shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 3.9.4, in connection with any Registration Statement filed by the Company, no Investor shall not be required to contribute any amount in excess of the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such indemnification obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by such Investor pursuant to Section 3.9.2 and any amounts paid by such Investor as a result of liabilities incurred under the underwriting agreement, if any, related to such sale. If indemnification is available under this Section 3.9, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Sections 3.9.1 and 3.9.2 hereof without regard to the provisions of this Section 3.9.4. The remedies provided for in this Section 3.9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

Section 3.10 Rules 144 and 144A and Regulation S. The Company shall file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Investor, make publicly available such necessary information for so long as necessary to permit sales that would otherwise be permitted by this Agreement pursuant to Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time or any similar rule or regulation hereafter adopted by the SEC), and it will take such further action as any Investor may reasonably request, all to the extent required from time to time to enable the Investors to sell Registrable Securities without Registration under the Securities Act in transactions that would otherwise be permitted by this Agreement and within the limitation of the exemptions provided by (i) Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Investor, the Company will deliver to the Investors a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

Section 3.11 Existing Registration Statements. Notwithstanding anything herein to the contrary and subject to applicable law and regulation, the Company may satisfy any obligation hereunder to file a Registration Statement or to have a Registration Statement become effective by a specified date by designating, by notice to each Investor, a Registration Statement that previously has been filed with the SEC or become effective, as the case may be, as the relevant Registration Statement for purposes of satisfying such obligation, and all references to any such obligation shall be construed accordingly; provided that such previously filed Registration Statement may be, and is, amended or, subject to applicable securities laws, supplemented to add the number of Registrable Securities, and, to the extent necessary, to identify the Investors as selling stockholders demanding the filing of a Registration Statement pursuant to the terms of this Agreement. To the extent this Agreement refers to the filing or effectiveness of other Registration Statements, by or at a specified time and the Company has, in lieu of then filing such Registration Statements or having such Registration Statements become effective,

designated a previously filed or effective Registration Statement as the relevant Registration Statement for such purposes, in accordance with the preceding sentence, such references shall be construed to refer to such designated Registration Statement, as amended or supplemented in the manner contemplated by the immediately preceding sentence.

ARTICLE 4

MISCELLANEOUS

Section 4.1 Authority: Effect. Each party hereto represents and warrants to and agrees with each other party that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized on behalf of such party and do not violate any agreement or other instrument applicable to such party or by which its assets are bound. This Agreement does not, and shall not be construed to, give rise to the creation of a partnership among any of the parties hereto, or to constitute any of such parties members of a joint venture or other association. The Company and its subsidiaries shall be jointly and severally liable for all obligations of each such party pursuant to this Agreement.

Section 4.2 Notices. Any notices, requests, demands and other communications required or permitted in this Agreement shall be effective if in writing and (i) delivered personally, (ii) sent by facsimile or e-mail, or (iii) sent by overnight courier, in each case, addressed as follows:

If to the Company to:

pSivida Corp.
480 Pleasant Street
Watertown, Massachusetts 02472
Attention: John D. Mercer
Telephone: (610) 254-9200
Facsimile: (617) 924-1392
Email: jmercer@psivida.com

With a copy to (which shall not constitute notice):

Hogan Lovells
1735 Market Street
23rd Floor
Philadelphia, PA 19103
Attention: Steven J. Abrams
Telephone No.: (267) 675-4642
Facsimile No.: (267) 675-4601
E-mail: steve.abrams@hoganlovells.com

If to the Investors, to:

EW Healthcare Partners, L.P.
EW Healthcare Partners-A, L.P.
21 Waterway Avenue, Suite 225
The Woodlands, TX 77380
Attn: Richard Kolodziejcyk, Chief Financial Officer
Email: rkolodziejcy@ewhv.com
Office: (281) 364-1555
Facsimile: (281) 364-9755

and each other Investor at the address set forth on the signature pages hereof.

with a copy (which shall not constitute notice) to:

Reed Smith LLP
599 Lexington Avenue
Attention: Mark G. Pedretti
Email: mpedretti@reedsmith.com
Office: (212) 549-0408
Facsimile: (212) 521-5450

Notice to the holder of record of any Registrable Securities shall be deemed to be notice to the holder of such securities for all purposes hereof.

Unless otherwise specified herein, such notices or other communications shall be deemed effective (i) on the date received, if personally delivered, (ii) on the date received if delivered by facsimile or e-mail on a Business Day, or if not delivered on a Business Day, on the first Business Day thereafter and (iii) two (2) Business Days after being sent by overnight courier. Each of the parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

Section 4.3 Termination and Effect of Termination. This Agreement shall terminate upon the date on which the Investors no longer holds any Registrable Securities, except for the provisions of Sections 3.8 and 3.9, which shall survive any such termination. No termination under this Agreement shall relieve any Person of liability for breach or Registration Expenses incurred prior to termination. In the event this Agreement is terminated, each Person entitled to indemnification rights pursuant to Section 3.9 hereof shall retain such indemnification rights with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

Section 4.4 Permitted Transferees. The rights of the Investors hereunder may be assigned (but only with all related obligations as set forth below) in connection with a Transfer of Registrable Securities to a Permitted Transferee of the Investor. Without prejudice to any other or similar conditions imposed hereunder with respect to any such Transfer, no assignment permitted under the terms of this Section 4.4 will be effective unless the Permitted Transferee to which the assignment is being made, if not an Investor, has delivered to the Company a written acknowledgment and agreement in form and substance reasonably satisfactory to the Company that the Permitted Transferee will be bound by, and will be a party to, this Agreement. A Permitted Transferee to whom rights are transferred pursuant to this Section 4.4 may not again transfer those rights to any other Permitted Transferee, other than as provided in this Section 4.4.

Section 4.5 Remedies. The parties to this Agreement shall have all remedies available at law, in equity or otherwise in the event of any breach or violation of this Agreement or any default hereunder. The parties acknowledge and agree that in the event of any breach of this Agreement, in addition to any other remedies that may be available, each of the parties hereto shall be entitled to specific performance of the obligations of the other parties hereto and, in addition, to such other equitable remedies (including preliminary or temporary relief) as may be appropriate in the circumstances. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any such delay, omission nor waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

Section 4.6 Amendments. This Agreement may not be orally amended, modified, extended or terminated, nor shall any oral waiver of any of its terms be effective. This Agreement may be amended, modified, extended or terminated, and the provisions hereof may be waived, only by an agreement in writing signed by the Company and Investors holding a majority of the then outstanding Registrable Securities. Each such amendment, modification, extension or termination shall be binding upon each party hereto. In addition, each party hereto may waive any right hereunder by an instrument in writing signed by such party.

Section 4.7 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.8 Consent to Jurisdiction. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the New York Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

Section 4.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 4.10 Merger; Binding Effect, Etc. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, supersedes all prior or contemporaneous oral or written agreements or discussions with respect to such subject matter, and shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective heirs, representatives, successors and permitted assigns. Except as otherwise expressly provided herein, neither the Investors nor any other party hereto may assign any of its respective rights or delegate any of its respective obligations under this Agreement without the prior written consent of the other parties hereto, and any attempted assignment or delegation in violation of the foregoing shall be null and void.

Section 4.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one instrument.

Section 4.12 Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 4.13 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, the Company and the Investors covenant, agree and acknowledge that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any current or future director, officer, employee, general or limited partner or member of any Investor or of any Affiliate or assignee thereof, as such, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of any Investor or any current or future member of any Investor or any current or future director, officer, employee, partner or member of any Investor or of any Affiliate or assignee thereof, as such, for any obligation of any Investor under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

COMPANY:

pSivida Corp.

By: _____

Name: Nancy Lurker
Title: President and Chief Executive Officer

[*Signature Page to Second Registration Rights Agreement*]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

EW Healthcare Partners, L.P.

By: _____
Name:
Title:

EW Healthcare Partners-A, L.P.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

Mark J Foley and Dana Foley Trustees of the Foley Family Trust U/A DTD 4/10/02

By: _____
Name: Mark J. Foley
Title: as Trustee

Mark J Foley and Dana Foley Trustees
of the Foley Family Trust U/A DTD 4/10/02

Address: _____

Attention: Mark J. Foley

Telephone: _____

Facsimile: _____

Email: _____

EXHIBIT C

FORM OF IRREVOCABLE TRANSFER AGENT INSTRUCTIONS

[PSIVIDA LETTERHEAD]

_____ __, 2018

Computershare Trust Company, N.A.
Transfer Agent and Registrar
[Address]

ATTN: _____

Ladies and Gentlemen:

You are hereby authorized and requested, as Registrar and Transfer Agent of the common stock of pSivida Corp. (the "Corporation"), to issue share certificates representing an aggregate of _____ shares of common stock (the "Shares") in such names and amounts set forth on Schedule A hereto.

Please issue and countersign share certificates in the names of the individuals and entities set forth on Schedule A, and deliver such certificates by certified overnight delivery to the addresses corresponding to such individuals and entities, set forth in Schedule A hereto. Please also update the records on Computershare's system for the Shares at the time of sale of the Shares on _____, 2018.

The Shares should bear a restrictive legend acknowledging that, among other things, the Shares are restricted under U.S. securities laws. The required legend that should appear on the Shares is set forth in the attached Schedule B.

[*Signature Page Follows*]

Very truly yours,

PSIVIDA CORP.

By: _____
Name: Nancy Lurker
Title: President and Chief Executive Officer

Received and Acknowledged:

COMPUTERSHARE TRUST COMPANY, N.A.

By: _____
Name:
Title:

SCHEDULE A

Common Stock Recipients

Purchaser Exact Name	Address for Notice	Address for Delivery	Tax ID	Share Amount
EW Healthcare Partners, L.P.				
EW Healthcare Partners-A, L.P.				
Mark J Foley and Dana Foley Trustees of the Foley Family Trust U/A DTD 4/10/02				

SCHEDULE B

Share Certificate Legend

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 UNDER THE SECURITIES ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

EXHIBIT D

FORM OF SECRETARY'S CERTIFICATE

PSIVIDA CORP.

SECRETARY'S CERTIFICATE

Reference is made to that certain Securities Purchase Agreement, dated as of March 28, 2018, by and among pSivida Corp, a Delaware corporation (the "Company"), and each purchaser identified on the signature pages thereto (the "Securities Purchase Agreement"). Capital Terms used herein and not defined have the meanings ascribed to them in the Securities Purchase Agreement.

I, John D. Mercer, the duly elected, qualified and acting Secretary of pSivida Corp., a Delaware corporation (the "Company"), do hereby certify that:

1. A true and complete copy of resolutions relating to the issuance of _____ shares of common stock, par value $0.001 per share of the Company to those purchasers identified in the Securities Purchase Agreement, dated as of March 28, 2018, and the transactions contemplated in the Transaction Documents by and among the Company and the purchasers named therein, as adopted by the Board of Directors of the Company by unanimous written consent dated as of March __, 2018, is attached hereto as Exhibit A; and such resolutions have not been amended or revoked and are in full force and effect on the date hereof;

2. Attached hereto as Exhibit B are true and complete copies of the Company's (i) Certificate of Incorporation and (ii) By-laws. Such Certificate of Incorporation and By-laws have not been amended or modified in any way and each remains in full force and effect on and as of the date hereof; and

3. The persons listed below have been duly elected to, and presently hold, the office or offices in the Company set opposite his or her name and have been duly authorized to execute and deliver on behalf of the Company any instruments, consents, or agreements required under the Transaction Documents to which the Company is a party and each signature set opposite each name is a true and correct copy of such officer's signature.

Name	Office	Signature
Nancy Lurker	President and Chief Executive Officer	
Leonard S. Ross	VP, Finance and Chief Accounting Officer	

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned has signed this Certificate this_____ day of _____, 2018.

John D. Mercer
Secretary

The undersigned, the President and Chief Executive Officer of the Company, does hereby certify that John D. Mercer is, and at all times since March 1, 2017 has been, the duly elected, qualified and acting Secretary of the Company and that the signature appearing above is his genuine signature.

Nancy Lurker
President and Chief Executive Officer

EXHIBIT E

FORM OF OFFICER'S CERTIFICATE

PSIVIDA CORP

OFFICER'S CERTIFICATE

Reference is made to that certain Securities Purchase Agreement, dated as of March __, 2018, by and among pSivida Corp, a Delaware corporation (the "Company"), and each purchaser identified on the signature pages thereto (the "Securities Purchase Agreement"). Capital Terms used herein and not defined have the meanings ascribed to them in the Securities Purchase Agreement.

I, Nancy Lurker, hereby certify as follows:

1. The Company has performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the date hereof.

2. The Company has received Stockholder Approval which is effective.

3. The undersigned is a duly elected or appointed, qualified and acting officer of the Company, holding the office of Chief Executive Officer; said officer has been duly authorized to execute and deliver on behalf of the Company any instruments, consents or agreements required under the Transaction Documents to which the Company is a party that she has executed and delivered.

[*Signature page follows*]

IN WITNESS WHEREOF, the undersigned has signed this Officers' Certificate this_____ day of _____, 2018.

By: _____
Name: Nancy Lurker
Title: President and Chief Executive Officer

EXHIBIT F

FORM OF ACCREDITED INVESTOR QUESTIONNAIRE

PSIVIDA CORP
ACCREDITED INVESTOR QUESTIONNAIRE

Ladies and Gentlemen:

The undersigned hereby represents that the undersigned has read the definition of "Accredited Investor" from Rule 501 of Regulation D attached hereto as Exhibit A and certifies that either (check one):

☐ The undersigned is an "Accredited Investor" (please check the appropriate box on Exhibit A to indicate which of the categories listed describes the investing entity or individual); or

☐ The undersigned is not an "Accredited Investor."

The foregoing representation is true and accurate as of the date first written below. **The undersigned acknowledges and agrees that pSivida Corp. will be entitled to rely on the truth and accuracy of the foregoing.**

Very truly yours,

Dated: _____, 2018

By: _____
Signature

Its: _____
Print Title (if applicable)

Address (at the State of Domicile): _____

Daytime Telephone Number: _____

Email: _____

Daytime Fax Number: _____

EXHIBIT A

Rule 501. Definitions and Terms Used in Regulation D.
As used in Regulation D, the following terms have the meaning indicated:

(a) **Accredited Investor.** "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

- ☐ Any natural person whose individual net worth[1], or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000 (excluding the value of such person's primary residence);
- ☐ Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
- ☐ Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- ☐ Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
- ☐ Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;
- ☐ Any director, executive officer or general partner of the issuer of the securities being offered or sold, or any director, executive officer or general partner of a general partner of that issuer;
- ☐ Any trust with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii);
- ☐ Any entity in which all of the equity owners are Accredited Investors.

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1 In calculating net worth, an individual may include equity in his or her personal property and real estate (other than his or her primary residence), cash, short-term investments, stock and securities. Inclusion of equity in personal property and real estate (other than an individual's primary residence) should be based on the fair market value of such property less debt secured by such property. An individual may not include the value of his or her primary residence in calculating net worth and may exclude the amount of any indebtedness secured by his or her primary residence up to the fair market value of the residence. The amount of any indebtedness secured by an individual's primary residence in excess of fair market value of the residence must be included as a liability in calculating net worth. An individual must also include as a liability any increase in the amount of debt secured by his or her primary residence incurred within 60 days prior to the date of his or her subscription for the Securities unless such debt is incurred in connection with the acquisition of the primary residence.

EXHIBIT G

FORM OF LOCK-UP

Lock-Up Agreement

March __, 2018

EW Healthcare Partners, L.P.
EW Healthcare Partners-A, L.P.
21 Waterway Avenue, Suite 255
The Woodlands, TX 77380

Ladies and Gentlemen:

As an inducement to the purchasers listed above (the "***Purchasers***") to execute the Securities Purchase Agreement (the "***Purchase Agreement***") among the Purchasers and pSivida Corp. (the "*Company*") providing for an initial investment (the "***Investment***") in shares of common stock (the "***Common Stock***") of the Company, the undersigned, by executing this lock-up agreement (this "***Agreement***"), agrees that without, in each case, the prior written consent of the Purchasers holding a majority of the shares of Common Stock purchased pursuant to the Purchase Agreement, during the period specified in the second succeeding paragraph (the "***Lock-Up Period***"), the undersigned will not: (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into, exercisable or exchangeable for or that represent the right to receive Common Stock (including without limitation, Common Stock which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon exercise of a stock option or warrant), whether now owned or hereafter acquired (the "**Undersigned's Securities**"); (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned's Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; (3) make any demand for, or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for Common Stock; or (4) publicly disclose the intention to do any of the foregoing.

The undersigned agrees that the foregoing restrictions preclude the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of the Undersigned's Securities even if the Undersigned's Securities would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include, without limitation, any short sale or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any of the Undersigned's Securities or with respect to any security that includes, relates to or derives any significant part of its value from the Undersigned's Securities.

The Lock-Up Period will commence on the date of this Agreement and continue and include the date that is the earlier of (a) the date of the closing of the transactions contemplated by the Second Securities Purchase Agreement (the "*Second Securities Purchase Agreement*") by and among the Company and the investors signatory thereto dated the date hereof (the "*Additional Investment*") and (b) the date of the Company's first meeting of stockholders at which a proposal to approve the Additional Investment is not approved by the Company's stockholders. The Company will provide the undersigned with written notice confirming the expiration of the Lock-Up Period.

Notwithstanding the foregoing, the undersigned may transfer the Undersigned's Securities: (i) as a *bona fide* gift or gifts; (ii) to the immediate family of the Undersigned or any trust, partnership, limited liability company or other entity for the direct or indirect benefit of the undersigned or the immediate family of the undersigned; or (iii) by testate succession or intestate succession; *provided*, in the case of clauses (i)-(iii), that (x) such transfer shall not involve a disposition for value, (y) the transferee agrees in writing with the Purchasers to be bound by the terms of this Agreement and (z) no filing by any party under Section 16(a) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), shall be required or shall be made voluntarily in connection with such transfer (other than a filing on a Form 5 filed within 45 days of December 31, 2018, in which case such Form 5 shall include a footnote describing the transaction being reported). For purposes of this Agreement, "immediate family" shall mean any relationship by blood, marriage, domestic partnership or adoption, not more remote than first cousin. Additionally, any Common Stock acquired by the undersigned in the open market on or after the date of the Purchase Agreement will not be subject to this Agreement; *provided* no filing under Section 16(a) of the Exchange Act by any party shall be voluntarily made in connection with any subsequent sale, transfer, gift or disposition of such Common Stock.

In addition, the foregoing restrictions shall not apply to:

(i) the exercise of stock options granted pursuant to the Company's equity incentive plans (including by "net" or "cashless exercise") or warrants that are described in the Company's Exchange Act reports; *provided* that the terms of this Agreement shall apply to any of the Undersigned's Securities issued upon such exercise;

(ii) transfers of the Undersigned's Securities to the Company as forfeitures to satisfy tax withholding obligations pursuant to the Company's equity incentive plans or inducement awards that are described in the Company's Exchange Act reports;

(iii) transfers of the Undersigned's Securities to the Company by an executive officer or director upon death, disability or termination of employment or service, in each case, of such executive officer or director, as applicable;

(iv) transfers of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction made to all holders of the Company's capital stock involving a change of control of the Company; *provided* that in the event that such tender offer, merger, consolidation or other such transaction is terminated and the Undersigned's Securities are returned to the Undersigned, the Undersigned's Securities shall again be subject to the restrictions contained in this Agreement;

(v) transfers of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock by operation of law to a spouse, former spouse, domestic partner, former domestic partner, child or other dependent pursuant to a qualified domestic order or in connection with a divorce settlement; *provided* that the transferee agrees in writing to be bound by the terms of this Agreement prior to such transfer and, if the undersigned is required to file a report under Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of shares of Common Stock during the Lock-Up Period, that the undersigned shall include a statement in such report to the effect that the transfer occurred by operation of law, such as pursuant to a qualified domestic order or in connection with a divorce settlement, as applicable;

(vi) the establishment of any contract, instruction or plan (a "**Plan**") that satisfies all of the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act ("**Rule 10b5-1**"); *provided* that no sales of the Undersigned's Securities shall be made pursuant to such a Plan prior to the expiration of the Lock-Up Period, and such a Plan may only be established if no public announcement of the establishment or existence thereof and no filing with the Securities and Exchange Commission or other regulatory authority in respect thereof or transactions thereunder or contemplated thereby, by the undersigned, the Company or any other person, shall be required, and no such announcement or filing is made voluntarily, by the undersigned, the Company or any other person, prior to the expiration of the Lock-Up Period; or

(vii) the sale or disposal of shares of Common Stock pursuant to a Plan that satisfies all of the requirements of Rule 10b5-1 and that is in effect as of the date of the Purchase Agreement; *provided* if the undersigned is required to file a report under Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of shares of Common Stock during the Lock-Up Period, the undersigned shall include a statement in such report to the effect that the transfer was made pursuant to a Plan established to comply with Rule 10b5-1.

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to decline to make any transfer of shares of Common Stock if such transfer would constitute a violation or breach of this Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that the undersigned shall be released from all obligations under this Agreement if (i) the Company notifies the Purchasers that it does not intend to proceed with the Investment, or (ii) the Purchase Agreement (other than the provisions thereof which survive termination) is terminated prior to payment for and delivery of the Common Stock to be sold thereunder.

The undersigned understands that the Purchasers are entering into the Purchase Agreement and proceeding with the Investment in reliance upon this Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

[SIGNATURE PAGE FOLLOWS]

Very truly yours,

EXHIBIT 10.3

EXECUTION VERSION

This REGISTRATION RIGHTS AGREEMENT (as it may be amended from time to time in accordance with the terms hereof, the "Agreement"), dated as of March 28, 2018, is made by and among pSivida Corp., a Delaware corporation (the "Company") and EW Healthcare Partners L.P. and EW Healthcare Partners-A L.P. (together with their Permitted Transferees that become party hereto, the "Investors").

RECITALS

WHEREAS, pursuant to the Securities Purchase Agreement dated as of the date hereof, by and among the Company and the Investors (the "Securities Purchase Agreement"), the Company will issue and sell to the Investors an aggregate of 8,606,324 shares of the Company's common stock, par value $0.001 per share (the "Securities").

WHEREAS, the execution and delivery of this Agreement by the Company is a condition precedent to closing of the purchase of the Securities by the Investors.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

EFFECTIVENESS

Section 1.1 Effectiveness. This Agreement shall become effective upon the closing of the purchase of the Securities by the Investors pursuant to the Securities Purchase Agreement.

ARTICLE 2

DEFINITIONS

Section 2.1 Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Adverse Disclosure" means public disclosure of material non-public information that, in the good faith judgment of the board of directors of the Company: (i) would be required to be made in any Registration Statement filed with the SEC by the Company so that such Registration Statement, from and after its effective date, does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such Registration Statement; and (iii) the Company has a bona fide business purpose for not disclosing publicly.

"Affiliate" means, with respect to any specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person or (b) in the event that the specified Person is a natural

Person, a Member of the Immediate Family of such Person; provided that the Company and each of its subsidiaries shall be deemed not to be Affiliates of any Investor. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning set forth in the preamble.

"Business Day" means any day except Saturday, Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Common Stock" means the common stock of the Company, par value $0.001 per share.

"Company" has the meaning set forth in the preamble.

"Credit Agreement" means that certain Credit Agreement, dated as of March 28, 2018, among the Company, SWK Funding LLC, as agent, sole lead arranger and sole bookrunner, and the financial institutions party thereto from time to time as lenders.

"Debt Financing" means the transactions contemplated by the Credit Agreement.

"Demand Registration" shall have the meaning set forth in Section 3.1.1(a).

"Demand Registration Request" shall have the meaning set forth in Section 3.1.1(a).

"Demand Registration Statement" shall have the meaning set forth in Section 3.1.1(c).

"Demand Suspension" shall have the meaning set forth in Section 3.1.5.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"FINRA" means the Financial Industry Regulatory Authority.

"Investors" has the meaning set forth in the preamble.

"Issuer Free Writing Prospectus" means an issuer free writing prospectus, as defined in Rule 433 under the Securities Act, relating to an offer of the Registrable Securities.

"Loss" shall have the meaning set forth in Section 3.9.1.

"Member of the Immediate Family" means, with respect to any Person who is an individual, (a) each parent, spouse (but not including a former spouse or a spouse from whom such Person is legally separated) or child (including those adopted) of such individual and (b) each trustee, solely in his or her capacity as trustee, for a trust naming only one or more of the Persons listed in sub-clause (a) as beneficiaries.

"Permitted Transferee" means any Affiliate of any Investor.

"Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

"Piggyback Notice" shall have the meaning set forth in Section 3.3.1.

"Piggyback Registration" shall have the meaning set forth in Section 3.3.1.

"Prospectus" means (i) the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments and supplements, and all other material incorporated by reference in such prospectus, and (ii) any Issuer Free Writing Prospectus.

"Public Offering" means the offer and sale of the Company's equity securities for cash pursuant to an effective Registration Statement under the Securities Act (other than a Registration Statement on Form S-4 or Form S-8 or any successor form).

"Registrable Securities" means (i) all shares of Common Stock held by the Investors, (ii) all shares of Common Stock issuable upon exercise, conversion or exchange of any option, warrant or convertible security not then subject to vesting or forfeiture to the Company and (iii) all shares of Common Stock directly or indirectly issued or then issuable with respect to the securities referred to in clauses (i) or (ii) above by way of a stock dividend or stock split, or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (w) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such Registration Statement, (x) such securities shall have been Transferred pursuant to Rule 144, (y) such holder is able to immediately sell such securities under Rule 144 without any restrictions on transfer (including without application of paragraphs (c), (d), (e), (f) and (h) of Rule 144), as reasonably determined by the Investor, or (z) such securities shall have ceased to be outstanding.

"Registration" means registration under the Securities Act of the offer and sale to the public of any Registrable Securities under a Registration Statement. The terms "register", "registered" and "registering" shall have correlative meanings.

"Registration Expenses" shall have the meaning set forth in Section 3.8.

"Registration Statement" means any registration statement of the Company filed with, or to be filed with, the SEC under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement other than a registration statement (and related Prospectus) filed on Form S-4 or Form S-8 or any successor form thereto.

"Representatives" means, with respect to any Person, any of such Person's officers, directors, employees, agents, attorneys, accountants, actuaries, consultants, equity financing partners or financial advisors or other Person associated with, or acting on behalf of, such Person.

"Rule 144" means Rule 144 under the Securities Act (or any successor rule).

"SEC" means the Securities and Exchange Commission or any successor agency having jurisdiction under the Securities Act.

"Securities" has the meaning set forth in the recitals.

"Securities Purchase Agreement" has the meaning set forth in the recitals.

"Second Securities Purchase Agreement" means that certain securities purchase agreement by and among the Company and the investors signatory thereto dated as of the date hereof.

"Securities Act" means the Securities Act of 1933, as amended, and any successor thereto, and any rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"Selling Stockholder Information" shall have the meaning set forth in Section 3.9.1.

"Shelf Period" shall have the meaning set forth in Section 3.2.2.

"Shelf Registration" shall have the meaning set forth in Section 3.2.1(a).

"Shelf Registration Request" shall have the meaning set forth in Section 3.2.1(a).

"Shelf Registration Statement" shall have the meaning set forth in Section 3.2.1(a).

"Shelf Suspension" shall have the meaning set forth in Section 3.2.3.

"Shelf Takedown Request" shall have the meaning set forth in Section 3.2.4(a).

"SWK Warrants" means the warrants to purchase shares of Common Stock issued in connection with the Debt Financing.

"Transfer" means, with respect to any Registrable Security, any interest therein, or any other securities or equity interests relating thereto, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation or other encumbrance or other disposition thereof, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise. "Transferred" shall have a correlative meaning.

"Underwritten Public Offering" means an underwritten Public Offering, including any bought deal or block sale to a financial institution conducted as an underwritten Public Offering.

"Underwritten Shelf Takedown" means an Underwritten Public Offering pursuant to an effective Shelf Registration Statement.

"WKSI" means any Securities Act registrant that is a well-known seasoned issuer as defined in Rule 405 under the Securities Act at the most recent eligibility determination date specified in paragraph (2) of that definition.

Section 2.2 Other Interpretive Provisions. (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "hereof", "herein", "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and any subsection and section references are to this Agreement unless otherwise specified.

(c) The term "including" is not limiting and means "including without limitation."

(d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(e) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

ARTICLE 3

REGISTRATION RIGHTS

The Company will perform and comply, and cause each of its subsidiaries to perform and comply, with such of the following provisions as are applicable to it. Each Investor will perform and comply with such of the following provisions as are applicable to such Investor.

Section 3.1 Demand Registration.

Section 3.1.1 Request for Demand Registration.

(a) At any time, but subject to the net proceeds limitations in Section 3.1.1(b), the Investors shall have the right to make a written request from time to time (a "Demand Registration Request") to the Company for Registration of all or part of the Registrable Securities held by such Investors and any other Investor. Any such Registration pursuant to a Demand Registration Request shall hereinafter be referred to as a "Demand Registration."

(b) Each Demand Registration Request shall specify (x) the kind and aggregate amount of Registrable Securities to be registered, provided that the anticipated net proceeds from the Registrable Securities to be registered by all Investors must be at least $5,000,000, and (y) the intended method or methods of disposition thereof.

(c) Upon receipt of a Demand Registration Request, the Company shall as promptly as practicable file a Registration Statement (a "Demand Registration Statement") relating to such Demand Registration, and use its commercially reasonable efforts to cause such Demand Registration Statement to be promptly declared effective under the Securities Act.

Section 3.1.2 Limitation on Demand Registrations. The Company shall not be obligated to take any action to effect any Demand Registration if a Demand Registration was declared effective, the Investors withdraw their request pursuant to Section 3.1.3 or an Underwritten Shelf Takedown requested by the Investors was consummated within the preceding ninety (90) days.

Section 3.1.3 Demand Withdrawal. The Investors may withdraw all or any portion of their Registrable Securities included in a Demand Registration from such Demand Registration at any time prior to the effectiveness of the applicable Demand Registration Statement. Upon receipt of a notice to such effect from the Investor or Investors holding an aggregate of at least a majority in interest of the then outstanding Registrable Securities with respect to all of their Registrable Securities included in such Demand Registration, the Company shall cease all efforts to secure effectiveness of the applicable Demand Registration Statement.

Section 3.1.4 Effective Registration. The Company shall use commercially reasonable efforts to cause the Demand Registration Statement to become effective and remain effective for not less than one hundred eighty (180) days (or such shorter period as will terminate when all Registrable Securities covered by such Demand Registration Statement have been sold or withdrawn), or, if such Demand Registration Statement relates to an Underwritten Public Offering, such longer period as in the opinion of counsel for the underwriter or underwriters a Prospectus is required by law to be delivered in connection with sales of Registrable Securities by an underwriter or dealer.

Section 3.1.5 Delay in Filing; Suspension of Registration. If the filing, initial effectiveness or continued use of a Demand Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Investors, delay the filing or initial effectiveness of, or suspend use of, the Demand Registration Statement (a "Demand Suspension"); provided, however, that the Company shall not be permitted to exercise a Demand Suspension more than once during any twelve (12)-month period for a period not to exceed sixty (60) days. In the case of a Demand Suspension, the Investors shall suspend use of the applicable Prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Investors in writing upon the termination of any Demand Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the Investors such numbers of copies of the Prospectus as so amended or supplemented as the Investors may reasonably request. The Company shall, if necessary, supplement or amend the Demand Registration Statement, if required by the registration form used by the Company for the Demand Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Investor.

Section 3.2 Shelf Registration.

Section 3.2.1 Request for Shelf Registration.

(a) At any time, upon the written request of the Investors (a "Shelf Registration Request"), the Company shall within thirty (30) days of the date of such request, file with the SEC a shelf Registration Statement pursuant to Rule 415 under the Securities Act ("Shelf Registration Statement") relating to the offer and sale of Registrable Securities held by the Investors from time to time in accordance with the methods of distribution elected by the Investors, and the Company shall use its commercially reasonable efforts to cause such Shelf Registration Statement to promptly become effective under the Securities Act, but in no event later than sixty (60) days after filing such Shelf Registration Statement. Any such Registration pursuant to a Shelf Registration Request shall hereinafter be referred to as a "Shelf Registration."

(b) If on the date of the Shelf Registration Request the Company is not a WKSI, then the Shelf Registration Request shall specify the aggregate amount of Registrable Securities to be registered, which shall not be less than a majority of the Registrable Securities then held by the Investors. The Company shall provide to the Investors the information necessary to determine the Company's status as a WKSI upon request.

Section 3.2.2 Continued Effectiveness. The Company shall use its commercially reasonable efforts to keep such Shelf Registration Statement continuously effective under the Securities Act in order to permit the Prospectus forming part of the Shelf Registration Statement to be usable by an Investor until the earlier of: (i) the date as of which all Registrable Securities have been sold pursuant to the Shelf Registration Statement or another Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder); and (ii) the date as of which the Investors no longer hold Registrable Securities (such period of effectiveness, the "Shelf Period"). Subject to Section 3.2.4, the Company shall be deemed not to have used its commercially reasonable efforts to keep the Shelf Registration Statement effective during the Shelf Period if the Company voluntarily takes any action or omits to take any action that would result in the Investors not being able to offer and sell any Registrable Securities pursuant to such Shelf Registration Statement during the Shelf Period, unless such action or omission is required by applicable law.

Section 3.2.3 Suspension of Registration. If the continued use of such Shelf Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Investors, suspend use of the Shelf Registration Statement (a "Shelf Suspension"); provided, however, that the Company shall not be permitted to exercise a Shelf Suspension more than one time during any twelve (12)-month period for a period not to exceed sixty (60) days. In the case of a Shelf Suspension, the Investors agree to suspend use of the applicable Prospectus in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Investors in writing upon the termination of any Shelf Suspension, amend or supplement the Prospectus, if necessary, so it does not contain any untrue statement or omission and furnish to the Investors such numbers of copies of the Prospectus as so amended or supplemented as the Investors may reasonably request. The Company shall, if necessary, supplement or amend the Shelf Registration

Statement, if required by the registration form used by the Company for the Shelf Registration Statement or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Investors.

Section 3.2.4 Shelf Takedown.

(a) At any time the Company has an effective Shelf Registration Statement with respect to the Investors' Registrable Securities, by notice to the Company specifying the intended method or methods of disposition thereof, the Investors may make a written request (a "Shelf Takedown Request") to the Company to effect a Public Offering, including an Underwritten Shelf Takedown, of all or a portion of the Investors' Registrable Securities that may be registered under such Shelf Registration Statement, and as soon as practicable the Company shall amend or supplement the Shelf Registration Statement as necessary for such purpose.

(b) All determinations as to whether to complete any Underwritten Shelf Takedown and as to the timing, manner, price and other terms of any Underwritten Shelf Takedown contemplated by this Section 3.2.4 shall be determined by the Investors.

(c) The Company shall not be obligated to take any action to effect any Underwritten Shelf Takedown if (x) the anticipated net proceeds from the Registrable Securities to be sold are not at least $5,000,000, or (y) a Demand Registration was declared effective or an Underwritten Shelf Takedown requested by the Investors was consummated within the preceding ninety (90) days.

Section 3.3 Piggyback Registration.

Section 3.3.1 Participation. If the Company at any time proposes to file a Registration Statement under the Securities Act or to conduct a Public Offering under an effective Shelf Registration Statement with respect to any offering of its equity securities for its own account or for the account of any other Persons (other than (i) a Registration under Sections 3.1 or 3.2, (ii) a Registration on Form S-4 or Form S-8 or any successor form to such forms or (iii) a Registration of securities solely relating to an offering and sale to employees or directors of the Company or its subsidiaries pursuant to any employee stock plan or other employee benefit plan arrangement), then, as soon as practicable (but in no event less than ten (10) Business Days prior to the proposed date of filing of such Registration Statement or, in the case of a Public Offering under a Shelf Registration Statement, the anticipated pricing or trade date), the Company shall give written notice (a "Piggyback Notice") of such proposed filing or Public Offering to the Investors, and such Piggyback Notice shall offer the Investors the opportunity to register under such Registration Statement such number of Registrable Securities as the Investors may request in writing, or to sell in such Public Offering up to such number of Registrable Securities that are included in the Shelf Registration Statement for such Public Offering or under a Shelf Registration Statement filed pursuant to Section 3.2, (a "Piggyback Registration"). The Investors must notify the Company of the number of Registrable Securities that they are requesting to be included in the Registration Statement within five (5) Business Days after receipt by the Investor of the Piggyback Notice. Subject to Section 3.3.2, the Company shall

include in such Registration Statement or in such Public Offering as applicable, all such Registrable Securities that are requested to be included therein within five (5) Business Days after receipt by the Investor of any such Piggyback Notice; provided, however, that if at any time after giving written notice of its intention to register or sell any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, or the pricing or trade date of a Public Offering under a Shelf Registration Statement, the Company determines for any reason not to register or sell or to delay the Registration or sale of such securities, the Company shall give written notice of such determination to the Investors and, thereupon, (i) in the case of a determination not to register or sell, shall be relieved of its obligation to register or sell any Registrable Securities in connection with such Registration or Public Offering (but not from its obligation to pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of any Investor to request that such Registration or sale be effected as a Demand Registration under Section 3.1 or an Underwritten Shelf Takedown under Section 3.2, as the case may be, and (ii) in the case of a determination to delay Registration or sale, in the absence of a request for a Demand Registration or an Underwritten Shelf Takedown, as the case may be, shall be permitted to delay registering or selling any Registrable Securities, for the same period as the delay in registering or selling such other securities as reasonably determined by the Company. The Investors shall have the right to withdraw all or part of their request for inclusion of its Registrable Securities in a Piggyback Registration by giving written notice to the Company of its request to withdraw.

Section 3.3.2 Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed offering of Registrable Securities included in a Piggyback Registration informs the Company and the Investors in writing that, in its or their opinion, the aggregate number of securities that the Investors and any other Persons intend to include in such offering exceeds the number that can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Registration shall be (i) first, one hundred percent (100%) of the securities that the Company proposes to sell, and (ii) second, and only if all the securities referred to in clause (i) have been included, the number of the Investors' Registrable Securities and the registrable securities of any Person included in such Piggyback Registration pursuant to the registration rights related to the Second Securities Purchase Agreement on a pro rata basis that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect and (iii) third, and only if all of the Registrable Securities referred to in clause (ii) have been included in such Registration, any other securities eligible for inclusion in such Registration.

Section 3.3.3 No Effect on Other Registrations. No Registration of Registrable Securities effected pursuant to a request under this Section 3.3 shall be deemed to have been effected pursuant to Sections 3.1 and 3.2 or shall relieve the Company of its obligations under Sections 3.1 and 3.2.

Section 3.4 Lock-Up Agreements. In connection with each Registration or sale of Registrable Securities pursuant to Section 3.1, 3.2 or 3.3 conducted as an Underwritten Public Offering, the Company agrees to cause its directors and executive officers, if requested by the underwriters in any such Underwritten Public Offering, to become bound by and to execute and deliver a customary lock-up agreement with the underwriter(s) of such Underwritten Public

Offering relating to the transfer of any equity securities of the Company held by such Person during the period commencing on the date of the final Prospectus relating to the Underwritten Public Offering and ending on the date specified by the underwriters (such period not to exceed ninety (90) days plus such additional period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on the publication or other distribution of research reports and analyst recommendations and opinions, if applicable).

Section 3.5 Registration Procedures.

Section 3.5.1 Requirements. In connection with the Company's obligations under Sections 3.1 through 3.4, the Company shall use its commercially reasonable efforts to effect such Registration and to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith the Company shall:

(a) As promptly as practicable prepare the required Registration Statement, including all exhibits and financial statements required under the Securities Act to be filed therewith and Prospectus, and, before filing a Registration Statement or Prospectus or any amendments or supplements thereto, (x) furnish to the underwriters, if any, and to the Investors, copies of all documents prepared to be filed, which documents shall be subject to the review of such underwriters and the Investors and their respective counsel, (y) make such changes in such documents concerning an Investor prior to the filing thereof as such Investor, or its counsel, may reasonably request and (z) except in the case of a Registration under Section 3.3 not file any Registration Statement or Prospectus or amendments or supplements thereto to which the Investors, in such capacity, or the underwriters, if any, shall reasonably object;

(b) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and supplements to the Prospectus as may be (x) reasonably requested by the Investors with Registrable Securities covered by such Registration Statement, (y) reasonably requested by any Investor (to the extent such request relates to information relating to such Investor), or (z) necessary to keep such Registration Statement effective for the period of time required by this Agreement, and comply with provisions of the applicable securities laws with respect to the sale or other disposition of all securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(c) notify the Investors and the managing underwriter or underwriters, if any, and (if requested) confirm such notice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Company (a) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, and when the applicable Prospectus or any amendment or supplement thereto has been filed, (b) of any written comments by the SEC, or any request by the SEC or other federal or state governmental authority for amendments or supplements to such Registration Statement or such Prospectus, or for additional information (whether before or after the effective date of the Registration Statement) or any other correspondence with the SEC relating to, or which may affect, the Registration, (c) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or any order by the SEC or any other regulatory

authority preventing or suspending the use of any preliminary or final Prospectus or the initiation or threatening of any proceedings for such purposes, (d) if, at any time, the representations and warranties of the Company in any applicable underwriting agreement cease to be true and correct in all material respects and (e) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(d) promptly notify the Investors and the managing underwriter or underwriters, if any, when the Company becomes aware of the happening of any event as a result of which the applicable Registration Statement or the Prospectus included in such Registration Statement (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus or any preliminary Prospectus, in light of the circumstances under which they were made) not misleading, when any Issuer Free Writing Prospectus includes information that may conflict with the information contained in the Registration Statement, or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement or Prospectus in order to comply with the Securities Act and, as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the Investors and the managing underwriter or underwriters, if any, an amendment or supplement to such Registration Statement or Prospectus, which shall correct such misstatement or omission or effect such compliance;

(e) to the extent the Company is eligible under the relevant provisions of Rule 430B under the Securities Act, if the Company files any Shelf Registration Statement, the Company shall include in such Shelf Registration Statement such disclosures as may be required by Rule 430B under the Securities Act (referring to the unnamed selling security holders in a generic manner) in order to ensure that any Investor may be added to such Shelf Registration Statement at a later time through the filing of a Prospectus supplement rather than a post-effective amendment;

(f) use its commercially reasonable efforts to prevent, or obtain the withdrawal of, any stop order or other order or notice preventing or suspending the use of any preliminary or final Prospectus;

(g) promptly incorporate in a Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment such information as the managing underwriter or underwriters, if any, and Investors agree should be included therein relating to the plan of distribution with respect to such Registrable Securities; and make all required filings of such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment;

(h) furnish to the Investors and each underwriter, if any, without charge, as many conformed copies as the Investors or such underwriter may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment or supplement thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(i) deliver to the Investors and each underwriter, if any, without charge, as many copies of the applicable Prospectus (including each preliminary Prospectus) and any amendment or supplement thereto and such other documents as the Investors or such underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities by the Investors or underwriter (it being understood that the Company shall consent to the use of such Prospectus or any amendment or supplement thereto by the Investors and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto);

(j) on or prior to the date on which the applicable Registration Statement becomes effective, use its commercially reasonable efforts to register or qualify, and cooperate with the Investors, the managing underwriter or underwriters, if any, and their respective counsel, in connection with the Registration or qualification of such Registrable Securities for offer and sale under the securities or "Blue Sky" laws of each state and other jurisdiction as any Investor or managing underwriter or underwriters, if any, or their respective counsel reasonably request in writing and do any and all other acts or things reasonably necessary or advisable to keep such Registration or qualification in effect for such period as required by Section 3.1 or Section 3.2, as applicable, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(k) cooperate with the Investors and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request prior to any sale of Registrable Securities to the underwriters;

(l) use its commercially reasonable efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Securities;

(m) make such representations and warranties to the Investors, and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in public offerings similar to the offering then being undertaken;

(n) enter into such customary agreements (including underwriting and indemnification agreements) and take all such other actions as the Investors or the managing underwriter or underwriters, if any, reasonably request in order to expedite or facilitate the Registration and disposition of such Registrable Securities;

(o) obtain for delivery to the Investors and to the underwriter or underwriters, if any, an opinion or opinions from counsel for the Company dated the most recent effective date of the Registration Statement or, in the event of an Underwritten Public Offering, the date of the closing under the underwriting agreement, in customary form, scope and substance, which opinions shall be reasonably satisfactory to the Investors or underwriters, as the case may be, and their respective counsel;

(p) in the case of an Underwritten Public Offering, obtain for delivery to the Company and the managing underwriter or underwriters, with copies to the Investors included in such Registration or sale, a comfort letter from the Company's independent registered public accounting firm (and, if necessary, any other independent registered public accounting firm of any subsidiary of the Company or any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement) in customary form and covering such matters of the type customarily covered by comfort letters as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(q) cooperate with each Investor selling Registrable Securities and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(r) use its commercially reasonable efforts to comply with all applicable securities laws and, if a Registration Statement was filed, make available to its security holders, as soon as reasonably practicable, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(s) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement;

(t) use its commercially reasonable efforts to cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of the Company's equity securities are then listed or quoted and on the Principal Trading Market;

(u) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by a representative appointed by the Investors, by any underwriter participating in any disposition to be effected pursuant to such Registration Statement and by any attorney, auditor or other agent retained by the Investors or any such underwriter, all pertinent financial and other records and pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees and the Company's independent registered public accounting firm which has certified its financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such Person in connection with such Registration Statement;

(v) in the case of an Underwritten Public Offering, cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters in any such offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto;

(w) take no direct or indirect action prohibited by Regulation M under the Exchange Act;

(x) take all reasonable action to ensure that any Issuer Free Writing Prospectus utilized in connection with any Registration complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related Prospectus, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(y) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities in accordance with the terms of this Agreement.

Section 3.5.2 Company Information Requests. The Company may require the Investors to furnish to the Company such information regarding the distribution of such securities and such other information relating to the Investors and their ownership of Registrable Securities as the Company may from time to time reasonably request in writing and the Company may exclude from such Registration or sale the Registrable Securities of each Investor who unreasonably fails to furnish such information within a reasonable time after receiving such request. Each Investor shall furnish such information to the Company and to cooperate with the Company as reasonably necessary to enable the Company to comply with the provisions of this Agreement.

Section 3.6 Underwritten Offerings.

Section 3.6.1 Shelf and Demand Registrations. If requested by the underwriters for any Underwritten Public Offering, pursuant to a registration or sale under Sections 3.1 or 3.2, the Company shall enter into an underwriting agreement with such underwriters, such agreement to be reasonably satisfactory in substance and form to each of the Company, the Investors and the underwriters, and to contain such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type, including indemnities no less favorable to the recipient thereof than those provided in Section 3.9 of this Agreement. Each Investor shall cooperate with the Company in the negotiation of the underwriting agreement and shall give consideration to the reasonable suggestions of the Company regarding the form thereof, and each Investor shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. No Investor shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Investor’s title to the Registrable Securities, intended method of distribution and any other representations to be made by such Investor as are generally prevailing in agreements of that type, and the aggregate amount of the liability of any Investor under such agreement shall not exceed such Investor’s proceeds from the sale of their Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

Section 3.6.2 Piggyback Registrations. If the Company proposes to register or sell any of its securities under the Securities Act as contemplated by Section 3.3 and such securities are to be distributed through one or more underwriters, the Company shall, if requested by the Investors pursuant to Section 3.3 and, subject to the provisions of Section 3.3.2, use its commercially reasonable efforts to arrange for such underwriters to include on the same terms and conditions that apply to the other sellers in such Registration or sale all the Registrable Securities to be offered and sold by such Investors among the securities of the Company to be distributed by such underwriters in such Registration or sale. The Investors shall be party to the underwriting agreement between the Company and such underwriters and shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. No Investor shall be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding such Investor's title to the Registrable Securities, intended method of distribution and any other representations to be made by such Investor as are generally prevailing in agreements of that type, and the aggregate amount of the liability of any Investor shall not exceed such Investor's proceeds from the sale of its Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

Section 3.6.3 Selection of Underwriters; Selection of Counsel. In the case of an Underwritten Public Offering under Sections 3.1 or 3.2, the managing underwriter or underwriters to administer the offering shall be determined by the Investor or Investors holding an aggregate of at least a majority in interest of the then outstanding Registrable Securities included in such registration. In the case of an Underwritten Public Offering under Section 3.3, the managing underwriter or underwriters to administer the offering shall be determined by the Company; provided that such underwriter or underwriters shall be reasonably acceptable to such Investors.

Section 3.7 No Inconsistent Agreements; Additional Rights. Neither the Company nor any of its subsidiaries shall hereafter enter into, and neither the Company nor any of its subsidiaries is currently a party to, any agreement with respect to its securities that is inconsistent with the rights granted to the Investors by this Agreement. Without approval of the Investors, neither the Company nor any of its subsidiaries shall enter into any agreement granting registration or similar rights to any Person (other than respect to registration rights granted pursuant to the Second Securities Purchase Agreement and the SWK Warrants), and the Company hereby represents and warrants that, as of the date hereof, no registration or similar rights have been granted to any other Person other than pursuant to this Agreement, the Second Securities Purchase Agreement and the SWK Warrants.

Section 3.8 Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement shall be paid by the Company, including (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the SEC or FINRA, (ii) all fees and expenses in connection with compliance with any securities or "Blue Sky" laws (including reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for

deposit with The Depository Trust Company and of printing Prospectuses), (iv) all fees and disbursements of counsel for the Company and of all independent registered public accounting firms of the Company and any subsidiaries of the Company (including the expenses of any special audit and comfort letters required by or incident to such performance), (v) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice, (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system, (viii) all reasonable fees and disbursements of one legal counsel for the Investors, (ix) any reasonable fees and disbursements of underwriters customarily paid by issuers or sellers of securities, (x) all fees and expenses of any special experts or other Persons retained by the Company in connection with any Registration or sale, (xi) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties) and (xii) all expenses related to the "road show" for any Underwritten Public Offering, including the reasonable out-of-pocket expenses of the Investors and underwriters, if so requested. All such expenses are referred to herein as "Registration Expenses". The Company shall not be required to pay any fees and disbursements to underwriters not customarily paid by the issuers of securities in an offering similar to the applicable offering, including underwriting discounts and commissions and transfer taxes, if any, attributable to the sale of Registrable Securities.

Section 3.9 Indemnification.

Section 3.9.1 Indemnification by the Company. The Company shall indemnify and hold harmless, to the full extent permitted by law, the Investors, each shareholder, member, limited or general partner of any Investor, each shareholder, member, limited or general partner of each such shareholder, member, limited or general partner, each of their respective Affiliates, officers, directors, shareholders, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons and each of their respective Representatives from and against any and all losses, penalties, judgments, suits, costs, claims, damages, liabilities and expenses, joint or several (including reasonable costs of investigation and legal expenses as incurred and any indemnity and contribution payments made to underwriters) (each, a "Loss" and collectively "Losses") arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which Registrable Securities are registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or any other disclosure document produced by or on behalf of the Company or any of its subsidiaries including any report and other document filed under the Exchange Act, (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading or (iii) any violation or alleged violation by the Company or any of its subsidiaries of any federal, state, foreign or common law rule or regulation applicable to the Company or any of its subsidiaries and relating to action or inaction in connection with any such registration, disclosure document or other document or report; provided, that the Investors shall not be entitled to indemnification pursuant to this Section 3.9.1 in respect of any untrue statement or omission contained in any information relating to any Investor furnished in writing by such Investor to the Company specifically for inclusion in a

Registration Statement and used by the Company in conformity therewith (such information "Selling Stockholder Information"). This indemnity shall be in addition to any liability the Company may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Investors or any indemnified party and shall survive the Transfer of such securities by any Investor and regardless of any indemnity agreed to in the underwriting agreement that is less favorable to the Investors. The Company shall also indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, their officers and directors and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above (with appropriate modification) with respect to the indemnification of the indemnified parties.

Section 3.9.2 Indemnification by the Investors. Each Investor shall (severally and not jointly) indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors and officers and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) from and against any Losses resulting from (i) any untrue statement of a material fact in any Registration Statement under which Registrable Securities were registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or (ii) any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading, in each case to the extent, but only to the extent, that such untrue statement or omission is contained in such Investor's Selling Stockholder Information. In no event shall the liability of any Investor hereunder be greater in amount than the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such indemnification obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by such Investor pursuant to Section 3.9.4 and any amounts paid by such Investor as a result of liabilities incurred under the underwriting agreement, if any, related to such sale.

Section 3.9.3 Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder only to the extent, if at all, that it forfeits substantive legal rights by reason of such delay or failure) and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (i) the indemnifying party has agreed in writing to pay such fees or expenses, (ii) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to indemnification hereunder and employ counsel reasonably satisfactory to such Person, (iii) the indemnified party has reasonably concluded (based upon advice of its outside counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, or (iv) in the reasonable judgment of any such Person (based upon advice of its outside counsel) a conflict of interest may exist between

such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If the indemnifying party assumes the defense, the indemnifying party shall not have the right to settle such action without the consent of the indemnified party, which shall not be unreasonably withheld, conditioned or delayed. No indemnifying party shall consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of an unconditional release from all liability in respect to such claim or litigation without the prior written consent of such indemnified party. If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its prior written consent, but such consent may not be unreasonably withheld, conditioned or delayed. It is understood that the indemnifying party or parties shall not, except as specifically set forth in this Section 3.9.3, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements or other charges of more than one separate firm admitted to practice in such jurisdiction at any one time unless (x) the employment of more than one counsel has been authorized in writing by the indemnifying party or parties, (y) an indemnified party has reasonably concluded (based on the advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other indemnified parties or (z) a conflict or potential conflict exists or may exist (based upon advice of counsel to an indemnified party) between such indemnified party and the other indemnified parties, in each of which cases the indemnifying party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

Section 3.9.4 Contribution. If for any reason the indemnification provided for in Section 3.9.1 and Section 3.9.2 is unavailable to an indemnified party or insufficient in respect of any Losses referred to therein (other than as a result of exceptions or limitations on indemnification contained in Section 3.9.1 and Section 3.9.2), then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party or parties on the other hand in connection with the acts, statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. In connection with any Registration Statement filed with the SEC by the Company, the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if contribution pursuant to this Section 3.9.4 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 3.9.4. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an indemnified party as a result of the Losses referred to in Sections 3.9.1 and 3.9.2 shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such

indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 3.9.4, in connection with any Registration Statement filed by the Company, no Investor shall not be required to contribute any amount in excess of the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such indemnification obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by such Investor pursuant to Section 3.9.2 and any amounts paid by such Investor as a result of liabilities incurred under the underwriting agreement, if any, related to such sale. If indemnification is available under this Section 3.9, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Sections 3.9.1 and 3.9.2 hereof without regard to the provisions of this Section 3.9.4. The remedies provided for in this Section 3.9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

Section 3.10 Rules 144 and 144A and Regulation S. The Company shall file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Investor, make publicly available such necessary information for so long as necessary to permit sales that would otherwise be permitted by this Agreement pursuant to Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time or any similar rule or regulation hereafter adopted by the SEC), and it will take such further action as any Investor may reasonably request, all to the extent required from time to time to enable the Investors to sell Registrable Securities without Registration under the Securities Act in transactions that would otherwise be permitted by this Agreement and within the limitation of the exemptions provided by (i) Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Investor, the Company will deliver to the Investors a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

Section 3.11 Existing Registration Statements. Notwithstanding anything herein to the contrary and subject to applicable law and regulation, the Company may satisfy any obligation hereunder to file a Registration Statement or to have a Registration Statement become effective by a specified date by designating, by notice to each Investor, a Registration Statement that previously has been filed with the SEC or become effective, as the case may be, as the relevant Registration Statement for purposes of satisfying such obligation, and all references to any such obligation shall be construed accordingly; provided that such previously filed Registration Statement may be, and is, amended or, subject to applicable securities laws, supplemented to add the number of Registrable Securities, and, to the extent necessary, to identify the Investors as selling stockholders demanding the filing of a Registration Statement pursuant to the terms of this Agreement. To the extent this Agreement refers to the filing or effectiveness of other Registration Statements, by or at a specified time and the Company has, in lieu of then filing such Registration Statements or having such Registration Statements become effective, designated a previously filed or effective Registration Statement as the relevant Registration Statement for such purposes, in accordance with the preceding sentence, such references shall be construed to refer to such designated Registration Statement, as amended or supplemented in the manner contemplated by the immediately preceding sentence.

ARTICLE 4

MISCELLANEOUS

Section 4.1 Authority: Effect. Each party hereto represents and warrants to and agrees with each other party that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized on behalf of such party and do not violate any agreement or other instrument applicable to such party or by which its assets are bound. This Agreement does not, and shall not be construed to, give rise to the creation of a partnership among any of the parties hereto, or to constitute any of such parties members of a joint venture or other association. The Company and its subsidiaries shall be jointly and severally liable for all obligations of each such party pursuant to this Agreement.

Section 4.2 Notices. Any notices, requests, demands and other communications required or permitted in this Agreement shall be effective if in writing and (i) delivered personally, (ii) sent by facsimile or e-mail, or (iii) sent by overnight courier, in each case, addressed as follows:

If to the Company to:

pSivida Corp.
480 Pleasant Street
Watertown, Massachusetts 02472
Attention: John D. Mercer
Telephone: (610) 254-9200
Facsimile: (617) 924-1392
Email: jmercer@psivida.com

With a copy to (which shall not constitute notice):

Hogan Lovells
1735 Market Street
23rd Floor
Philadelphia, PA 19103
Attention: Steven J. Abrams
Telephone No.: (267) 675-4642
Facsimile No.: (267) 675-4601
E-mail: steve.abrams@hoganlovells.com

If to an Investor, to:

EW Healthcare Partners L.P.
EW Healthcare Partners-A L.P.
21 Waterway Avenue, Suite 225
The Woodlands, TX 77380
Attn: Richard Kolodziejcyk, Chief Financial Officer
Email: rkolodziejcy@ewhv.com
Office: (281) 364-1555
Facsimile: (281) 364-9755

with a copy (which shall not constitute notice) to:

Reed Smith LLP
599 Lexington Avenue
Attention: Mark G. Pedretti
Email: mpedretti@reedsmith.com
Office: (212) 549-0408
Facsimile: (212) 521-5450

Notice to the holder of record of any Registrable Securities shall be deemed to be notice to the holder of such securities for all purposes hereof.

Unless otherwise specified herein, such notices or other communications shall be deemed effective (i) on the date received, if personally delivered, (ii) on the date received if delivered by facsimile or e-mail on a Business Day, or if not delivered on a Business Day, on the first Business Day thereafter and (iii) two (2) Business Days after being sent by overnight courier. Each of the parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

Section 4.3 Termination and Effect of Termination. This Agreement shall terminate upon the date on which the Investors no longer holds any Registrable Securities, except for the provisions of Sections 3.8 and 3.9, which shall survive any such termination. No termination under this Agreement shall relieve any Person of liability for breach or Registration Expenses incurred prior to termination. In the event this Agreement is terminated, each Person entitled to indemnification rights pursuant to Section 3.9 hereof shall retain such indemnification rights with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

Section 4.4 Permitted Transferees. The rights of the Investors hereunder may be assigned (but only with all related obligations as set forth below) in connection with a Transfer of Registrable Securities to a Permitted Transferee of the Investor. Without prejudice to any other or similar conditions imposed hereunder with respect to any such Transfer, no assignment permitted under the terms of this Section 4.4 will be effective unless the Permitted Transferee to which the assignment is being made, if not an Investor, has delivered to the Company a written acknowledgment and agreement in form and substance reasonably satisfactory to the Company that the Permitted Transferee will be bound by, and will be a party to, this Agreement. A Permitted Transferee to whom rights are transferred pursuant to this Section 4.4 may not again transfer those rights to any other Permitted Transferee, other than as provided in this Section 4.4.

Section 4.5 Remedies. The parties to this Agreement shall have all remedies available at law, in equity or otherwise in the event of any breach or violation of this Agreement or any default hereunder. The parties acknowledge and agree that in the event of any breach of this Agreement, in addition to any other remedies that may be available, each of the parties hereto shall be entitled to specific performance of the obligations of the other parties hereto and, in

addition, to such other equitable remedies (including preliminary or temporary relief) as may be appropriate in the circumstances. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any such delay, omission nor waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

Section 4.6 Amendments. This Agreement may not be orally amended, modified, extended or terminated, nor shall any oral waiver of any of its terms be effective. This Agreement may be amended, modified, extended or terminated, and the provisions hereof may be waived, only by an agreement in writing signed by the Company and Investors holding a majority of the then outstanding Registrable Securities. Each such amendment, modification, extension or termination shall be binding upon each party hereto. In addition, each party hereto may waive any right hereunder by an instrument in writing signed by such party.

Section 4.7 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof.

Section 4.8 Consent to Jurisdiction. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the New York Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law..

Section 4.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 4.10 Merger; Binding Effect, Etc. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, supersedes all prior or contemporaneous oral or written agreements or discussions with respect to such subject matter, and shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective heirs, representatives, successors and permitted assigns. Except as otherwise expressly provided herein, neither the Investors nor any other party hereto may assign any of its respective rights or delegate any of its respective obligations under this Agreement without the prior written consent of the other parties hereto, and any attempted assignment or delegation in violation of the foregoing shall be null and void.

Section 4.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one instrument.

Section 4.12 Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 4.13 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, the Company and the Investors covenant, agree and acknowledge that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any current or future director, officer, employee, general or limited partner or member of any Investor or of any Affiliate or assignee thereof, as such, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of any Investor or any current or future member of any Investor or any current or future director, officer, employee, partner or member of any Investor or of any Affiliate or assignee thereof, as such, for any obligation of any Investor under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

COMPANY:

pSivida Corp.

By: /s/ Nancy Lurker
Name: Nancy Lurker
Title: President and Chief Executive Officer

[*Signature Page to First Registration Rights Agreement*]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

INVESTORS:

EW Healthcare Partners L.P.

By: Essex Woodlands Fund IX-GP, L.P.
Its: General Partner

By: Essex Woodlands IX, LLC
Its: General Partner

By: /s/ Ronald W. Eastman
Name: Ronald W. Eastman
Title: Manager

EW Healthcare Partners-A L.P.

By: Essex Woodlands Fund IX-GP, L.P.
Its: General Partner

By: Essex Woodlands IX, LLC
Its: General Partner

By: /s/ Ronald W. Eastman
Name: Ronald W. Eastman
Title: Manager

EXHIBIT 10.4

EXECUTION VERSION

CREDIT AGREEMENT

among

PSIVIDA CORP.,
as Borrower,

SWK FUNDING LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of March 28, 2018

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CREDIT AGREEMENT

This CREDIT AGREEMENT (as may be amended, restated, supplemented, or otherwise modified from time to time, this "Agreement") dated as of March 28, 2018 (the "Closing Date"), among PSIVIDA CORP., a Delaware corporation ("Borrower"), the financial institutions party hereto from time to time as lenders (each a "Lender" and collectively, the "Lenders") and SWK FUNDING LLC (in its individual capacity, "SWK"), as Agent for all Lenders.

RECITALS

WHEREAS, pursuant to that certain Agreement and Plan of Merger dated as of the date hereof (the "Acquisition Agreement") by and among Borrower, Oculus Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Borrower ("Merger Sub"), Icon Bioscience, Inc., a Delaware corporation ("Icon"), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the representative of the stockholders of Icon, Merger Sub and Icon will enter into a business combination transaction pursuant to which Merger Sub will merge with and into Icon, with Icon as the surviving corporation (the "Merger");

WHEREAS, Borrower has asked the Lenders to extend credit to Borrower consisting of (a) an initial Term Loan in the aggregate principal amount of $15,000,000 to be used in part to fund the Merger and (b) a Subsequent Term Loan in an aggregate principal amount of up to $5,000,000; and

WHEREAS, the Lenders are severally, and not jointly, willing to extend such credit to Borrower subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1 Definitions; Interpretation.

1.1 Definitions.

When used herein the following terms shall have the following meanings:

Account Control Agreement means, individually and collectively, any account control or similar agreement(s) entered into from time to time at Agent's request, among a Loan Party, Agent and any third party bank or financial institution at which such Loan Party maintains a Deposit Account.

Acquisition means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) a Product Acquisition, or (d) a merger or consolidation or any other combination (other than a merger, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary).

Acquisition Agreement shall have the meaning set forth in the Recitals.

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) other than with respect to any Lender, any manager, officer or director of such Person and (c) with respect to any Lender, any entity administered or

managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. For purposes of the definition of the term "Affiliate", other than with respect to any Lender, a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, neither Agent nor any Lender shall be deemed an Affiliate of Borrower or of any Subsidiary.

Agent means SWK in its capacity as administrative agent for all Lenders hereunder and any successor thereto in such capacity.

Aggregate Revenue means, for any period, for Borrower and its Subsidiaries on a consolidated basis, the aggregate amount of revenue recognized under GAAP (including, for the avoidance of doubt, for any period, the applicable portion of any one-time upfront cash payment with respect to any such revenues for which GAAP required the recognition of revenue from such cash payment to be deferred over time), consistently applied, less all rebates, discounts and other price allowances. "Aggregate Revenue" shall be determined in a manner consistent with the methodologies, practices and procedures used in developing Borrower's audited financial statements.

Agreement has the meaning set forth in the Preamble.

Approved Fund means any fund, trust or similar entity that invests in commercial loans in the ordinary course of business and is advised or managed by (i) a Lender, (ii) an Affiliate of a Lender, (iii) the same investment advisor that manages a Lender or (iv) an Affiliate of an investment advisor that manages a Lender.

Assignment Agreement means an agreement substantially in the form of Exhibit A.

Authorization shall have the meaning set forth in Section 5.22(b).

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in Dallas, Texas, and, in the case of a Business Day which relates to the calculation of LIBOR, on which dealings are carried on in the London interbank Eurodollar market.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person.

Cash Equivalent Investment means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least "A-l" by Standard & Poor's Ratings Group or "P-l" by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by any Lender (or by a commercial banking institution that is a member of the Federal Reserve System or is a U.S. branch of a foreign banking institution and has a combined capital and surplus and undivided profits of not less than $500,000,000), (d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in

clause (c) above) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than one-hundred percent (100%) of the repurchase obligation of such Lender (or other commercial banking institution) thereunder, (e) money market accounts or mutual funds which invest exclusively or substantially in assets satisfying the foregoing requirements, (f) cash, (g) other short term liquid investments approved in writing by Agent (such approval not to be unreasonably withheld or delayed), and (h) instruments equivalent to those referred to in clauses (a) through (g) above denominated in euro or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by the Loan Parties or any of their Subsidiaries organized in such jurisdiction.

Change of Control means the occurrence of any of the following, unless such action has been consented to in advance in writing by Agent in its sole discretion:

(i) any Person (other than a Permitted Holder or any employee benefit plan of a Person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) acquires the direct or indirect ownership of more than fifty-one percent (51%) of the issued and outstanding voting Equity Interests of Borrower;

(ii) fifty percent (50%) or more of the members of the Board of Directors (or other applicable governing body) of Borrower on any date shall not have been (*x*) members of the Board of Directors (or other applicable governing body) of Borrower on the date twelve (12) months prior to such date, (*y*) approved (by recommendation, nomination, election or otherwise) by Persons who constitute at least a majority of the members of the Board of Directors (or other applicable governing body) of Borrower as constituted on the date twelve (12) months prior to such date or (*z*) approved (by recommendation, nomination, election or otherwise) by Persons referred to in clauses (*x*) and (y) above constituting at the time of such approval at least a majority of the members of the Board of Directors (or other applicable governing body) of Borrower;

(iii) except as otherwise permitted by Section 7.4(a), Borrower shall at any time fail to own, directly or indirectly, (a) one hundred percent (100%) of the Equity Interests of each of the Guarantors other than Icon and (b) at least ninety-eight percent (98%) of the Equity Interests in Icon;

(iv) a Key Person Event;

(v) any "change in/of control" or similar event in any document governing indebtedness of any Loan Party (other than any Loan Documents) in excess of $500,000, individually or in the aggregate which gives the holder of such indebtedness the right to accelerate or otherwise require payment of such indebtedness prior to the maturity date thereof; or

(vi) except as otherwise permitted by Section 7.4(b), the sale of all or substantially all of the assets of Borrower or any of its Subsidiaries, or any merger or consolidation by Borrower or any of its Subsidiaries not otherwise permitted by Section 7.4(a).

Closing Date shall have the meaning set forth in the Preamble.

Closing Date Acquisition shall have the meaning set forth in Section 4.11.

Closing Date Warrant means that certain warrant issued to SWK by Borrower on the Closing Date.

CMS means the United States Centers for Medicare and Medicaid Services.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Agent pursuant to which a lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Loan Party, in each case in an aggregate amount in excess of $250,000, acknowledges the Liens of Agent and waives (or, if approved by Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a lessor, permits Agent reasonable access to any Collateral stored or otherwise located thereon.

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, the IP Security Agreement, each Collateral Access Agreement, any mortgage delivered in connection with the Loan from time to time, each Account Control Agreement and each other agreement or instrument pursuant to or in connection with which any Loan Party grants a Lien in any Collateral to Agent for the benefit of Lenders, each as amended, restated or otherwise modified from time to time.

Commitment means, as to any Lender, such Lender's Pro Rata Term Loan Share.

Competitor means, at any time of determination, any Person that is an operating pharmaceutical company directly and primarily engaged in manufacturing and/or distributing ophthalmic-related products or services.

Compliance Certificate means a certificate substantially in the form of Exhibit B.

Consolidated Net Income means, with respect to any Person and its Subsidiaries, for any period, the consolidated net income (or loss) of such Person and its respective Subsidiaries for such period, as determined under GAAP, but excluding therefrom (to the extent otherwise included therein) (i) extraordinary or non-recurring gains or losses, (ii) any non-cash gains or losses attributable to write-ups or write-downs of assets, (iii) any income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Borrower or any Subsidiary on the date that such Person's assets are acquired by Borrower or any Subsidiary, (iv) any gains or losses from discontinued operations and (v) any gains or losses from non-ordinary course dispositions.

Consolidated Unencumbered Liquid Assets means as of any date of determination (i) any Cash Equivalent Investment owned by Borrower and the other Loan Parties on a consolidated basis (I) which are not the subject of any Lien (other than (w) the Lien for the benefit of Agent and Lenders, (x) bankers' liens, (y) rights of setoff or (z) any non-consensual Lien permitted under Section 7.2) or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Borrower and such Loan Parties and (II) which are held in one or more accounts other than Exempt Accounts, minus (ii) the aggregate amount of Borrower's accounts payable under GAAP that are ninety (90) days or more past due for such accounts payable (other than any accounts payable being contested in good faith).

Contingent Acquisition Consideration means, with respect to an Acquisition, all obligations of Borrower or any Subsidiary to make earn out or other contingency payments (including purchase price adjustments, non-competition and consulting agreements, other indemnity obligations, royalty payments

and sale, development and other milestone payments) pursuant to the documentation relating to such Acquisition. For purposes of determining the aggregate consideration paid for an Acquisition at the time of such Acquisition, the amount of any Contingent Acquisition Consideration shall be deemed to be the maximum amount of the payments in respect thereof as specified in the documents relating to such Acquisition, excluding any such payments, the amount of which is not, upon achieving a contingency upon which payment is conditioned, a fixed amount or a range of fixed amounts, but is determined based on a percentage of revenue or sales or similar metric (e.g. a royalty).

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Contract Rate means a rate per annum equal to (*x*) the LIBOR Rate, plus (*y*) ten and one-half of one percent (10.50%).

Controlled Group means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with a Loan Party, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

Controlled Investment Affiliate means, with respect to any Person, any fund or investment vehicle that (a) is organized for the purposes of making investments in one or more companies and (b) is controlled by, or under common control with, such Person. For purposes of this definition "control" means the power to direct or cause the direction of management and policies of a Person, whether by contract or otherwise.

Controlled Substances Act means Title II of the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. §§ 801 et seq., as amended.

Copyrights shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

DEA means the United States Drug Enforcement Administration.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business and Contingent Acquisition Consideration), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such

Person (with the amount thereof being measured as the lesser of (*x*) the aggregate unpaid amount of such indebtedness and (*y*) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for tax purposes but the transaction is classified as an operating lease in accordance with GAAP. For the avoidance of doubt, "Debt" shall not include Permitted Bond Hedge Transactions or Permitted Warrant Transactions.

Debtor Relief Law means, collectively: (a) Title 11 of the United States Code, 11 U.S.C. § 101 et. seq., as amended from time to time, and (b) all other United States or foreign applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally, in each case as amended from time to time.

Declined Permitted Acquisition has the meaning set forth in the definition of "Permitted Acquisition."

Default means any event that, if it continues uncured, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

Default Rate means a rate per annum equal to the lesser of (i) three percent (3%) over the Contract Rate, or (ii) the maximum rate of interest permitted to be charged by applicable laws or regulation governing this Agreement until paid.

Deposit Account means, individually and collectively, any bank or other depository accounts of a Loan Party.

Disclosure Letter means that certain disclosure letter dated as of the Closing Date containing certain schedules delivered by the Loan Parties to the Agent and the Lenders.

Disposition means, as to any asset or right of any Loan Party, any sale, lease, assignment or other transfer, in each case excluding (collectively, the "Permitted Dispositions") (i) the sale, lease, assignment or other transfer of Inventory or Product in the ordinary course of business, (ii) any issuance of Equity Interests by Borrower or by any Subsidiary to its equity holders, including, without limitation, the issuance of Equity Interest of Icon to its equity holders pursuant to options outstanding under the Icon Incentive Plan, (iii) transfers, destruction or other disposition of surplus, obsolete or worn-out assets in the ordinary course of business, (iv) leases and subleases entered into in the ordinary course of business, (v) sales and exchanges of Cash Equivalent Investments in the ordinary course of business or to the extent otherwise permitted hereunder, (vi) Permitted Liens and transactions permitted by Sections 7.3, 7.4(a), 7.4(c) and 7.10, (vii) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (vii) a cancellation of any intercompany Debt among the Loan Parties and their Subsidiaries, (ix) any Involuntary Disposition, (x) any sale, lease, license, transfer or other disposition of property to any Loan Party or any Subsidiary; provided, that, if the transferor of such property is a Loan Party, the transferee thereof must be a Loan Party, (xi) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged, (xii) a disposition of property to

the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) the proceeds (determined on an after-tax basis) of such disposition are applied to the purchase price of such replacement, (xiii) dispositions consisting of the sale, transfer, assignment or other disposition of unpaid and overdue accounts receivable in connection with the collection, compromise or settlement thereof in the ordinary course of business and not as part of a financing transaction, (xiv) the termination of any swap contract in connection with Hedging Obligations permitted hereunder, (xv) the sale, transfer, issuance or other disposition of a *de minimis* number of shares of the Equity Interests of a Foreign Subsidiary of a Loan Party in order to qualify members of the governing body of such Foreign Subsidiary if required by applicable law, (xvi) the sale of any Product by a Loan Party or any of its Subsidiaries to any Subsidiary or a Loan Party, as applicable, or to end users (through wholesalers or other typical sales channels) or to distributors in the ordinary course of business, (xvii) any disposition or other transfer of any Product, without the payment or provision of consideration to any Loan Party or any of its Subsidiaries for such Product (other than expense reimbursement), reasonably necessary for the conduct of any then on-going clinical trial or other development or regulatory activities associated with such Product, (xviii) any disposition or other transfer of any Product as promotional support in the ordinary course of business or in consideration of services in the ordinary course of business, (xix) Permitted Licenses and (xx) any other sale, lease, assignment or other transfer where the Net Cash Proceeds of such sale, lease, assignment or other transfer do not in the aggregate exceed $250,000 in any Fiscal Year.

Disqualified Capital Stock means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, prior to the ninety-first (91st) day after the Term Loan Maturity Date (other than (x) settlements, conversions, redemptions and payments made solely in the form of Qualified Capital Stock and (y) cash in lieu of fractional shares), (b) requires the payment of any cash dividends at any time prior to the ninety-first (91st) day after the Term Loan Maturity Date (other than the payment of cash in lieu of fractional shares), (c) contains any repurchase obligation at the option of the holder thereof, in whole or in part, which may come into effect prior to payment in full of all Obligations (other than (x) any obligation for repurchases solely made with Qualified Capital Stock and (y) cash in lieu of fractional shares), or (d) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in clause (a), (b) or (c) above, in each case at any time prior to the ninety-first (91st) day after the Term Loan Maturity Date; provided, that, any Equity Interests that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interests upon the occurrence of a change in control occurring prior to the ninety-first (91st) day after the Term Loan Maturity Date shall not constitute Disqualified Capital Stock if such Equity Interests provide that the issuer thereof will not redeem or repurchase any such Equity Interests pursuant to such provisions prior to the payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted) under the Loan Documents; provided, further, that, if such Equity Interests are issued pursuant to a plan for the benefit of employees of Borrower or any Subsidiary or by any such plan to such employees, including the Existing Stock Incentive Plans, such Equity Interests shall not constitute Disqualified Capital Stock solely because such employee may deliver such Equity Interests to Borrower and its Subsidiaries (or Borrower or such Subsidiary withholds such Equity Interests) in satisfaction of any exercise price or tax withholding obligations with respect to such Equity Interests; provided, further, that, any warrants to purchase shares of common stock of the Borrower issued to the Permitted Holders and certain other investors pursuant to that certain Second Securities Purchase Agreement, dated as of March 28, 2018, by and among the Borrower and each purchaser identified on the signature pages thereto shall not constitute Disqualified Capital Stock.

Dollar and $ mean lawful money of the United States of America.

Domestic Subsidiary means any Subsidiary that is organized under the laws of any state of the United States or the District of Columbia.

Drug Application means, for any Product, a new drug application, or an abbreviated new drug application, as appropriate, as those terms are defined in the FDA Law and Regulation.

EBITDA means, for any Person and its Subsidiaries for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income for such period (and without duplication), (i) Interest Expense, (ii) income tax expense (including tax accruals), (iii) depreciation and amortization, (iv) nonrecurring cash fees, costs and expenses incurred in connection with (a) the Acquisitions of product licenses and product lines from a third party, and, sales and development milestone payments to any third party, in relation to any material contractual obligation or any other Acquisition or Investment and, to the extent permitted hereunder, issuances or incurrences of Debt, issuances of Equity Interests, Dispositions, Involuntary Dispositions, consolidations, recapitalizations or refinancing transactions and modifications of Indebtedness, whether or not consummated, (b) the negotiation and closing of this Agreement and the Loan Documents, and (c) the Closing Date Acquisition, (v) non-cash expenses relating to equity-based compensation, including stock option awards, or purchase accounting, (vi) any unrealized losses (or minus any such gains) in respect of Hedging Obligations, (vii) any foreign currency translation losses (or minus any such gains), (viii) any net losses (or minus any net gains) attributable to the early extinguishment or conversion of Debt and (ix) other non-recurring and/or non-cash expenses or charges approved by the Agent.

Elapsed Period has the meaning set forth in Section 2.9.1(a).

Environmental Claims means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or, to the extent related to Hazardous Substances, any Person or property.

Environmental Laws means all present or future foreign, federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to the effect of the environment on health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing; provided that Equity Interests shall not include any Permitted Convertible Bond Indebtedness.

Event of Default means any of the events described in Section 8.1.

Excluded Subsidiary means (i) any Foreign Subsidiary Holding Company and (ii) any Massachusetts securities corporation, so long as the granting of a guarantee by such corporation would result in adverse tax or other consequences to the Borrower or such Subsidiary, including, as of the Closing Date, pSivida Securities Corporation, a Massachusetts securities corporation.

Excluded Taxes has the meaning set forth in Section 3.1(a).

Exempt Accounts means any Deposit Accounts, securities accounts or other similar accounts (i) into which there are deposited no funds other than those intended solely to cover compensation to employees of the Loan Parties and their Subsidiaries (and related contributions to be made on behalf of such employees to health and benefit plans and other employee wage or employee benefit payments to or for the benefit of any Loan Party's or its Subsidiary's employees) plus balances for outstanding checks for compensation and such contributions from prior periods; (ii) constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the tax obligations of such Person or its employees, (iii) over which the grant of a Deposit Account Control Agreement is legally prohibited or which constitute cash collateral in respect of a Permitted Lien under any of Sections 7.2 (k), (l), (o), (q), (t) (in each case so long as the amount on deposit in each such account(s) is not materially in excess of the applicable amounts permitted in relation to each such Permitted Lien in accordance with Section 7.2) and (v), (iv) zero balance accounts that are swept at least weekly to a non-Exempt Account (including any such accounts where payments pursuant to Medicaid, Medicare, TRICARE or other state or federal healthcare payor programs are deposited), (v) in which the amount on deposit does not exceed $50,000 in the aggregate for all such accounts at any time.

Existing Stock Incentive Plans means, collectively, the Icon Stock Incentive Plan and the pSivida Stock Incentive Plans.

Exit Fee shall have the meaning set forth in Section 2.7(b).

FATCA means Sections 1471 through 1474 of the IRC and any current or future regulations thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

FD&C Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as amended.

FDA means the United States Food and Drug Administration.

FDA Law and Regulation means the provisions of the FD&C Act and all applicable regulations promulgated by the FDA.

FDA Products means any finished products sold by Borrower or any of the other Loan Parties for itself or for a third party that are subject to applicable Health Care Laws.

Fiscal Quarter means a calendar quarter of a Fiscal Year.

Fiscal Year means the fiscal year of Borrower and its Subsidiaries, which period shall be the twelve (12) month period ending on June 30 of each year.

Foreign Lender means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Foreign Subsidiary means any Subsidiary that is not a Domestic Subsidiary.

Foreign Subsidiary Holding Company means any Domestic Subsidiary all or substantially all of the assets of which consist of Equity Interests in one or more Foreign Subsidiaries and/or Indebtedness of one or more Foreign Subsidiaries and any other assets directly related thereto.

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

GAAP means generally accepted accounting principles in effect in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any agency, branch of government, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign. Governmental Authority shall include any agency, branch or other governmental body charged with the responsibility and/or vested with the authority to administer and/or enforce any Health Care Laws.

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement dated as of the Closing Date executed by each Loan Party signatory thereto in favor of Agent and Lenders.

Guarantors means (a) each Domestic Subsidiary of Borrower existing on the Closing Date other than pSivida Securities Corporation, (b) upon consummation of the Merger, Icon (as successor to Merger Sub) and (c) each other Person that joins as a Guarantor pursuant to the requirements of Section 6.8 of this Agreement.

Hazardous Substances means hazardous waste, pollutant, contaminant, toxic substance, oil, hazardous material, hazardous chemical or other hazardous substance regulated by any Environmental Law.

Health Care Laws mean all foreign, federal and state fraud and abuse laws relating to the regulation of healthcare products, pharmaceutical products, laboratory facilities and services, healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, including but not limited to (i) the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b)), the Stark Law (42 U.S.C. §1395nn and §1395(q)), the civil False Claims Act (31 U.S.C. §3729 et seq.), TRICARE (10 U.S.C. Section 1071 et seq.), the Civil Monetary Penalty Law (42 U.S.C. Section 1320a-7 and 1320a-7a) and the regulations promulgated pursuant to such statues; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009 (collectively, "HIPAA"), and the regulations promulgated thereunder, (iii) the Medicare statute (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) the Medicaid statute (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the FD&C Act and all applicable requirements, regulations and guidances issued thereunder by the FDA (including FDA Law and Regulation); (vi) the Controlled

Substances Act, as amended, and all applicable requirements, regulations and guidances issued thereunder by the DEA; (vii) [reserved]; (viii) quality, safety and accreditation standards and requirements of all applicable foreign and domestic federal, provincial or state laws or regulatory bodies; (ix) all applicable licensure laws and regulations; (x) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors; and (xi) any and all other applicable health care laws (whether foreign or domestic), regulations, manual provisions, policies and administrative guidance, including those related to the corporate practice of medicine, fee-splitting, state anti-kickback or self-referral prohibitions, each of clauses (i) through (xi) as may be amended from time to time.

Hedging Obligation means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

Icon shall have the meaning set forth in the Recitals.

Icon Stock Incentive Plan means that certain Icon 2007 Stock Incentive Plan adopted on October 23, 2007, as amended from time to time.

Indemnified Taxes has the meaning set forth in Section 3.1(a).

Intellectual Property shall mean all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses (as defined in the Guarantee and Collateral Agreement), internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any intellectual property rights relating thereto) and Copyright Licenses (as defined in the Guarantee and Collateral Agreement) and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses (as defined in the Guarantee and Collateral Agreement); Mask Works (as defined in the Guarantee and Collateral Agreement); industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

Interest Expense means for any Person and its Subsidiaries for any period the consolidated interest expense of such Person and its Subsidiaries for such period (including all imputed interest on Capital Leases).

Inventory has the meaning set forth in the Guarantee and Collateral Agreement.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of obligations of any other Person (other than travel and similar advances to employees in the ordinary course of business) or (d) the making of an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested (which, in the case of any Investment constituting the contribution of an asset or property, shall be based on such Person's good faith estimate of the fair market value of such asset or property at the time such Investment is made), less the amount of Cash Equivalent Investments or the fair market value (as determined by such Person in good faith) of any other property received, returned or repaid as a result of dispositions, distributions or liquidations of all or a portion of such Investment, without adjustment for subsequent increases or decreases in the value of such Investment or write-ups, write-downs or write-offs with respect thereto.

Involuntary Disposition means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any of their Subsidiaries.

IP Security Agreement means the Intellectual Property Security Agreement dated on or about the Closing Date by each Loan Party signatory thereto in favor of Agent and Lenders.

IRC means the Internal Revenue Code of 1986, as amended.

IRS means the United States Internal Revenue Service.

Joint Venture means a joint venture, partnership or other similar arrangement, in corporate, partnership or similar legal form with a Person other than Borrower or its Subsidiaries.

Key Person means Nancy Lurker.

Key Person Event means, unless such action is consented to in advance in writing by Agent (such consent not to be unreasonably withheld or delayed), the Key Person shall no longer serve in its current executive capacity with Borrower, unless such Key Person is replaced within one-hundred eighty (180) days (or such longer period as may be agreed by Agent) and which has been approved in writing by Agent (which approval shall not be unreasonably withheld or delayed) to assume such responsibility and capacity of the applicable departing Key Person.

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses (limited, in the case of legal counsel, to the reasonable and documented out-of-pocket fees, charges and disbursements of one primary counsel for the Agent and the Lenders (taken as a whole) and of a single local counsel to the Agent and the Lender (taken as a whole) in each relevant jurisdiction).

Lenders has the meaning set forth in the Preamble.

LIBOR Rate means a fluctuating rate per annum equal to the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. Dollar deposits are offered by leading banks in the London interbank deposit market), as the offered rate for loans in Dollars for a three (3) month period, rounded upwards, if necessary, to the nearest 1/8 of 1%. The rate is set by the ICE Benchmark Administration as of 11:00 a.m. (London time) as determined two (2) Business Days prior to the Closing Date and each Payment Date, as applicable, and effective on the Payment Date immediately following such determination date (it being understood and agreed that Borrower shall not be responsible for any "breakage" costs or similar expenses in respect of any payment on the initial Payment Date and any reset of the LIBOR Rate on such date as a result of the period

between the Closing Date and the initial Payment Date being less than three (3) months). If Bloomberg Professional Service (or another nationally-recognized rate reporting source acceptable to Agent) no longer reports the LIBOR Rate or Agent determines in good faith that the rate so reported no longer accurately reflects the rate available to Agent in the London Interbank Market or if such index no longer exists or if page USD-LIBOR-BBA (ICE) no longer exists or accurately reflects the rate available to Agent in the London Interbank Market, Agent and Borrower shall mutually select a replacement index that approximates as near as possible such prior index. Notwithstanding the foregoing, in no event shall the "LIBOR Rate" ever be less than one and one-half of one percent (1.5%) per annum at any time.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan or Loans means, individually and collectively the Term Loan and any other advances made by Agent and Lenders in accordance with the Loan Documents.

Loan Documents means this Agreement, any Notes, the Collateral Documents, the Disclosure Letter, that certain Post-Closing Agreement dated on or about the Closing Date and all documents, instruments and agreements delivered in connection with the foregoing, excluding for the avoidance of doubt, the Closing Date Warrant.

Loan Party means Borrower and each Guarantor.

Margin Stock means any "margin stock" as defined in Regulation T, U or X of the FRB.

Material Adverse Effect means (a) a material adverse change in, or a material and adverse effect upon, the financial condition, operations, assets, business or properties of the Loan Parties taken as a whole, (b) a material impairment of the ability of the Loan Parties, taken as a whole, to perform their payment Obligations under any Loan Document or (c) a material and adverse effect upon the perfection or priority of Agent's security interests in any material portion of the Collateral under the Collateral Documents or upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document.

Material Contract has the meaning assigned in Section 5.21 hereof.

Material Product means any Product that is material to the operations, assets, business, property or financial condition of Borrower and its Subsidiaries, taken as a whole.

Material Required Permit means any Required Permit that is material to the operations, assets, business, property or financial condition of Borrower and its Subsidiaries, taken as a whole.

Material Services means any Services that are material to the operations, assets, business, property or financial condition of Borrower and its Subsidiaries, taken as a whole.

Merger shall have the meaning set forth in the Recitals.

Merger Sub shall have the meaning set forth in the Recitals.

Multiemployer Pension Plan means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which Borrower or any member of the Controlled Group may have any liability.

Net Cash Proceeds means, with respect to any Disposition or Involuntary Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance (other than business interruption insurance) and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by any Loan Party pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition or Involuntary Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition or Involuntary Disposition (*provided* that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by the applicable Loan Party), (iii) taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition or Involuntary Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by the Loan Parties in connection therewith established in accordance with GAAP (*provided* that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds) and (vi) with respect to any Disposition or Involuntary Disposition, all money actually applied within two-hundred seventy (270) days (or committed to be reinvested pursuant to a legally binding commitment within such 270-day period and are so reinvested within 90 days thereafter) to repair or replace the assets in question or to repair or reconstruct damaged property or property affected by loss, destruction, damage, condemnation, confiscation, requisition, seizure or taking, or to otherwise purchase assets that are used or useful in any line of business of the Loan Parties.

Non-Consenting Lender means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.1 and (b) has been approved by the Required Lenders.

Note means a promissory note substantially in the form of Exhibit C.

Obligations means all liabilities, indebtedness and obligations (monetary (including post-petition interest, allowed or not) or otherwise) of any Loan Party under this Agreement, any other Loan Document or any other document or instrument executed in connection herewith or therewith which are owed to any Lender or Affiliate of a Lender, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. For the avoidance of doubt, the term “Obligations” shall not include the obligations of the Loan Parties under the Closing Date Warrant or, solely to the extent relating to the Closing Date Warrant, the indemnification and expense reimbursement obligations of the Loan Parties set forth in the Loan Documents.

OFAC shall mean the U.S. Department of Treasury’s Office of Foreign Asset Control.

Origination Fee shall have the meaning set forth in Section 2.7(a).

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than contingent indemnification obligations, yield protection and expense reimbursement to the extent no claim giving rise thereto has been asserted in respect of contingent indemnification obligations, and to the extent no amounts therefor have been asserted, in the case of yield protection and expense reimbursement obligations).

Patents shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title and interest in and to: (i) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of any of the foregoing.

Payment Date means the fifteenth (15th) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15th day is not a Business Day), commencing with May 15, 2018.

PBGC means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its material functions under ERISA.

Pension Plan means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permit means, with respect to any Person any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject, including without limitation all registrations with Governmental Authorities.

Permitted Acquisitions means an Investment consisting of an Acquisition by any Loan Party or Wholly-Owned Subsidiary of a Loan Party; provided, that: (a) no Default or Event of Default shall have occurred and be continuing or would result from such Acquisition, (b) the property acquired (or the property of the Person acquired) in such Acquisition is used or useful in the same or a related line of business as Borrower and its Subsidiaries were engaged in on the Closing Date (or any reasonable extensions or expansions thereof), (c) the Agent shall have received all items in respect of the Equity Interests or property acquired in such Acquisition as and when required to be delivered by the terms of Section 6.8, (d) in the case of an Acquisition of the Equity Interests of another Person, the Board of Directors of such other Person shall have duly approved such Acquisition, (e) except as otherwise agreed to by Agent, the representations and warranties made by the Loan Parties in each Loan Document shall be true and correct in all material respects at and as if made as of the date of such Acquisition (after giving effect thereto) except to the extent any such representation and warranty expressly relates to an earlier date, in which case it shall be true and correct in all material respects as of such earlier date, (f) Agent shall have determined, in its commercially reasonable (from the standpoint of a secured creditor judgment) that such Acquisition shall not create any increased risk that Borrower will be unable to perform its obligations hereunder or will otherwise result in an unreasonably small amount of operating capital with which to run the Loan Parties' business operations following such Acquisition and (g) Agent shall have otherwise approved the terms and conditions of such Permitted Acquisition in its commercial reasonable (from the standpoint of a secured lender) discretion. Notwithstanding anything set forth in this

Agreement and except as Agent may otherwise agree in writing, if Borrower requests approval of an Acquisition and Agent has declined to approve such Permitted Acquisition in its reasonable discretion (a "Declined Permitted Acquisition"), Borrower may prepay the Loans without the payment of any prepayment fee that would otherwise be payable by Borrower pursuant to Section 2.8.2(b) and notwithstanding anything to the contrary in Section 2.8.2(a).

Permitted Bond Hedge Transaction means any call, call spread or capped call option (or substantively equivalent derivative transaction) relating to Borrower's common stock (or other securities or property following a fundamental change of Borrower or other change of, or adjustment with respect to, the common stock of Borrower, in each case to the extent not constituting a Change of Control) purchased or otherwise entered into by Borrower in connection with the issuance of any Permitted Convertible Bond Indebtedness; provided, that, the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by Borrower from the sale of any related Permitted Warrant Transaction (or in the case of capped calls, where such proceeds are not received but are reflected in a reduction of the premium), does not result in the incurrence of additional Debt by Borrower (other than Debt from the issuance of Permitted Convertible Bond Indebtedness in connection with such Permitted Bond Hedge Transaction).

Permitted Convertible Bond Indebtedness means Debt having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into Equity Interests of Borrower; provided, that (i) such Permitted Convertible Bond Indebtedness shall be unsecured, (ii) no Default or Event of Default shall have occurred and be continuing at the time of incurrence of such Permitted Convertible Bond Indebtedness or would result therefrom, (iii) such Permitted Convertible Bond Indebtedness does not have a scheduled maturity date earlier than 90 calendar days after the Term Loan Maturity Date, (iv) Borrower shall have delivered to the Agent a certificate of a Responsible Officer of Borrower certifying as to the foregoing and (v) Agent shall have otherwise approved the terms and conditions of such Debt in its commercial reasonable (from the standpoint of a secured lender) discretion.

Permitted Disposition has the meaning set forth in the definition of "Disposition".

Permitted Holders means, collectively, EW Healthcare Partners, L.P., EW Healthcare Partners-A, L.P. and each of their Controlled Investment Affiliates; "Permitted Holder" means any one of them.

Permitted Licenses means, collectively, any license or sublicence entered into by a Loan Party or any Subsidiary, including without limitation, (a) licenses of over-the-counter software that is commercially available to the public, (b) intercompany licenses or grants of rights for development, manufacture, production, commercialization (including commercial sales to end users), marketing, co-promotion, or distribution among the Loan Parties and their Subsidiaries, and (c) any non-exclusive or exclusive license of (or covenant not to sue with respect to) Intellectual Property or technology or a grant of rights for development, manufacture, production, commercialization (including commercial sales to end users), marketing, co-promotion, or distribution.

Permitted Liens means Liens permitted by Section 7.2.

Permitted Warrant Transaction means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Borrower's common stock (or other securities or property following a merger event or other change of the common stock of the Borrower to the extent not constituting a Change of Control) sold by the Borrower substantially contemporaneously with any purchase by the Borrower of a related Permitted Bond Hedge Transaction, with a strike price higher than the strike price of the Permitted Bond Hedge Transaction.

Person means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

Prior Debt means the Debt listed on Schedule 4.1 to the Disclosure Letter.

Pro Rata Term Loan Share means, with respect to any Lender, the applicable percentage (as adjusted from time to time in accordance with the terms hereof) specified opposite such Lender's name on Annex I which percentage represents the aggregate percentage of the Term Loan Commitment held by such Lender, which percentage shall be with respect to the outstanding balance of the Term Loans as of any date of determination after the Term Loan Commitment has terminated.

Product means any prescription drug product subject to a Drug Application that is manufactured, sold, developed, tested or marketed by Borrower or any of its Subsidiaries, including without limitation, those products set forth on Schedule 5.18(b) to the Disclosure Letter (as updated from time to time in accordance with Section 6.1.2); *provided, however*, that if Borrower shall fail to comply with the obligations under Section 6.1.2 to give notice to Agent and update Schedule 5.18(b) to the Disclosure Letter with respect to manufacturing, selling, developing, testing or marketing of any new Product, any such improperly undisclosed Product shall be deemed to be included in this definition; and *provided, further*, that drug products manufactured by Borrower for unaffiliated third parties shall not be deemed "Products" hereunder.

Product Acquisition means the acquisition of a product license or a product line (excluding, for purposes of Sections 7.10 hereof, any pending Acquisitions as of the Closing Date as set forth on Schedule 1.1 to the Disclosure Letter), and/or related Intellectual Property acquired or licensed by a Loan Party or any of its Subsidiaries from a Third Party to facilitate the advertisement, development, importing, manufacturing, marketing, offering for sale, promotion, sale, testing, use or distribution of such product or product line by a Loan Party or a Subsidiary.

pSivida Stock Incentive Plans means, collectively, (i) that certain pSivida Corp. 2008 Inventive Plan, as amended in 2009 and as the same may be further amended from time to time, and (ii) that certain pSivida Corp. 2016 Long Term Incentive Plan as amended from time to time.

Qualified Capital Stock of any Person means any Equity Interests of such Person that are not Disqualified Capital Stock.

Registered Intellectual Property means all applications, registrations and recordings for or of Patents, Trademarks or Copyrights filed by a Loan Party with any Governmental Authority.

Required Lenders means Lenders having an aggregate Pro Rata Term Loan Share in excess of fifty percent (50%), collectively.

Required Permit means a Permit (a) required under applicable law to the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of Products or related services under any laws applicable to the business of Borrower or any of its Subsidiaries (including, without limitation, any Health Care Laws) or any Drug Application (including without limitation, at any point in time, all licenses, approvals and Permits issued by the FDA, CMS, or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of any Product by Borrower or any of its Subsidiary as such activities are being conducted by Borrower or its Subsidiary with respect to such Product at such time), and (b) required by any Person from which Borrower or any of its Subsidiaries have received an accreditation.

Responsible Officer shall mean the chief executive officer, president or chief accounting officer of a Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent, in form and substance reasonably acceptable to Agent.

Revenue-Based Payment has the meaning set forth in Section 2.9.1(a).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Borrower and its Subsidiaries with respect to the sale of Products or the provision of services by independent licensees of Borrower and/or its Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

Services means services provided by Borrower or any Subsidiary of Borrower to un-Affiliated Persons, including without limitation any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

Solvent means, as to any Person at any time, that (a) the fair value of the property of such Person on a going concern basis is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the property of such Person on a going concern basis is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured in the ordinary course of business; (c) such Person is able to pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they become absolute and matured in the ordinary course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities become absolute and matured in the ordinary course of business; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is planning to engage and the transactions contemplated hereby and the Indebtedness related thereto.

Subject Fiscal Year has the meaning set forth in Section 6.1.8.

Subject Period has the meaning set forth in Section 6.1.8.

Subsequent Minimum Capital Raise Condition means Borrower's issuance of (i) additional Equity Interests or (ii) Permitted Convertible Bond Indebtedness or other subordinated debt obligations (including the execution of a subordination agreement in favor of Agent in connection with any such Debt), on terms and conditions reasonably satisfactory to Agent (it being agreed that the terms and conditions of certain additional Equity Interests to be issued after the Closing Date and disclosed to Agent on or prior to the Closing Date are satisfactory to Agent), resulting in net cash proceeds to Borrower of not less than $20,000,000.

Subsequent Term Loan means the Term Loan made to the Borrower pursuant to Section 2.2.2.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower.

SWK has the meaning set forth in the Preamble.

Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section 2.1, and shall, for the avoidance of doubt, include the Subsequent Term Loan to the extent the same is advanced hereunder.

Term Loan Commitment means $20,000,000 as such amount may be increased from time to time pursuant to Section 2.2.3 hereof.

Term Loan Maturity Date means March 27, 2023.

Termination Date means the earlier to occur of (a) the Term Loan Maturity Date, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through (*x*) the application of Net Cash Proceeds from any Disposition or Involuntary Disposition, or (*y*) any other mandatory prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Third Party means any Person other than Borrower, any Subsidiary thereof or any Affiliate thereof.

Trademarks shall mean all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) all of such Loan Party's (or if referring to another Person, such other Person's) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and all research and development and the goodwill of the business relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

U.S. Lender means any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the equity interests of which (except directors' qualifying shares) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

1.2 Interpretation.

(a) In the case of this Agreement and each other Loan Document, (a) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (b) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (c) the term "including" is not limiting and means "including but not limited to"; (d) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including"; (e) unless otherwise expressly provided in such Loan Document, (i) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (f) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (g) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower's, Agent's or Lenders' involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (*x*) within the sole and absolute discretion of Agent and/or Lenders; and (*y*) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount reported or otherwise denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion via the applicable exchange rate identified and normally published by Bloomberg Professional Service as the applicable exchange rate as of the close of currency trading on each trading date during the applicable period of measurement, or, if such currency conversion deals exclusively with a particular date of determination, as of the close of currency trading on such date of determination (or the following trading date to the extent no currency trading took place on such date of determination). If Bloomberg Professional Service no longer reports such currency exchange rate, Agent shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

Section 2 Credit Facility.

2.1 Term Loan Commitments. On and subject to the terms and conditions of this Agreement, each Lender, severally and for itself alone, agrees to make a multi-draw term loan to Borrower (each such loan, individually and collectively, a "Term Loan") in an amount equal to such Lender's applicable Pro Rata Term Loan Share of the Term Loan Commitment. The Commitments of Lenders to make any portion of the Term Loan shall terminate concurrently with the making of such portion of the Term Loan, such portion terminated to equal (i) on the Closing Date, the amount of such Term Loan made on the Closing Date, and (ii) on the date of the making of the Subsequent Term Loan, the amount of the Subsequent Term Loan. The Loan is not a revolving credit facility, and therefore any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.2 Loan Procedures.

2.2.1 Initial Advance.

On the Closing Date, Lenders shall advance to Borrower an amount equal to Fifteen Million and No/100 Dollars ($15,000,000), upon Borrower's satisfaction of the conditions to closing described in Section 4 of this Agreement. The Borrower and the Lenders acknowledge and agree that the Closing Date Warrant is part of an investment unit within the meaning of Section 1273(c)(2) of the IRC, which includes the initial advance under the Term Loan. The Borrower and the Lenders agree that the allocation of issue price for the investment unit consisting of the initial advance under the Term Loan and the Closing Date Warrant, in each case, will be based on their relative fair market values on the issue date of each such investment unit. The Borrower and the Lenders further agree as between them, that they will cooperate with each other in determining the fair market value of the Closing Date Warrant and that, pursuant to Treas. Reg. § 1.1273-2(h), a portion of the issue price of the investment unit consisting of the initial advance under the Term Loan and the Closing Date Warrant will be allocable to the Closing Date Warrant and the balance shall be allocable to the initial advance under the Term Loan. The Borrower and the Lenders each agree to prepare their federal income tax returns in a manner consistent with the foregoing.

2.2.2 Subsequent Term Loan.

During the period beginning on the Closing Date and ending December 31, 2018, so long as (a) no Material Adverse Effect, Default or Event of Default has occurred and is continuing, and (b) the Subsequent Minimum Capital Raise Condition has been satisfied, upon Agent's receipt of a written request from Borrower for a subsequent advance of the Term Loan, Lenders shall make one (1) additional advance (within five (5) Business Days (or such shorter period as may be agreed to by the Agent) of receipt by Agent of such written request for advance) to Borrower in the aggregate amount equal to, but not less than, Five Million and No/100 Dollars ($5,000,000).

2.2.3 Accordion Feature.

Upon request of Borrower, at any time and from time to time prior to the Termination Date and subject to the commercial reasonable (from the standpoint of a secured creditor) approval of Agent and the consent of any Person whose consent is required under the terms of any of the other Loan Documents, Agent will work with Borrower in good faith and using commercially reasonable efforts to act as arranger to increase the Term Loan Commitments by an aggregate amount not to exceed $10,000,000 with additional Term Loan Commitments from Lenders or new Term Loan Commitments from financial institutions with which the Agent has existing lending relationships, or which are clients of Agent, or any other lenders identified by Borrower and, in each case, reasonably acceptable to Agent and Borrower, *provided*, that: (i) at the time of any such increase, no Default or Event of Default has occurred and is continuing; (ii) no Lender shall be obligated to participate in any such increase by increasing the amount of its own Term Loan Commitment, which decision shall be made in the sole discretion of each Lender; (iii) Agent shall have determined, in its commercially reasonable (from the standpoint of a secured creditor judgment) that such increase in the Term Loan Commitments shall not create any increased risk that Borrower will be unable to perform its obligations hereunder; (iv) such additional Term Loan Commitments shall be in a minimum aggregate principal amount of $1,000,000 and integral multiples of $100,000 in excess thereof; (v) Agent and Lenders shall have received any fees required by Agent and Lenders (including, without limitation, any such fees as may be due pursuant to any fee letter) in connection with such increase and (vi) all documents reasonably required by Agent to evidence any such increase shall be executed and delivered to Agent on or before the effective date of such increase, including, without limitation, one or more new or replacement Notes as may be requested by any Lender.

2.3 Commitments Several.

The failure of any Lender to make the initial Term Loan on the Closing Date or the Subsequent Term Loan in accordance with Section 2.2.2 above shall not relieve any other Lender of its obligation (if any) to make a Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender.

2.4 Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, setoff, counterclaim or defense for any reason against Agent and Lenders. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are not subject to any litigation, dispute, refund, claims of rescission, setoff, netting, counterclaim or defense whatsoever, including but not limited to, claims by or against any Loan Party or any other Person. Payment of the Obligations by Borrower, shall be made only by wire transfer, in Dollars, and in immediately available funds when due and payable pursuant to the terms of this Agreement and the other Loan Documents, is not subject to compromise, adjustment, extension, satisfaction, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deductible, reduction, termination or modification, whether arising out of transactions concerning the Loan, or otherwise. Without limitation to the foregoing, to the fullest extent permitted under applicable law and notwithstanding any other term or provision contained in this Agreement or any other Loan Document, Borrower hereby waives (and shall cause each Loan Party to waive) (a) presentment, protest and demand, notice of default (except as expressly required in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of protest, notice of demand and of dishonor and non-payment of the Obligations, (b) any requirement of diligence or promptness on Agent's part in the enforcement of its rights under the provisions of this Agreement and any other Loan Document, (c) any rights, legal or equitable, to require any marshalling of assets or to require foreclosure sales in a particular order, (d) all notices of every kind and description which may be required to be given by any statute or rule of law except as specifically required hereunder, (e) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale or any portion of the Collateral, (f) all rights of homestead, exemption, redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the Liens created by the Loan Documents, (g) the pleading of any statute of limitations as a defense to any demand under any Loan Document and (h) any defense to the obligation to make any payments required under the Loan Documents, including the obligation to pay taxes based on any damage to, defects in or destruction of the Collateral or any other event, including obsolescence of any of the Collateral, it being agreed and acknowledged that such payment obligations are unconditional and irrevocable. Borrower further acknowledges and agrees (i) to any substitution, subordination, exchange or release of any security or the release of any party primarily or secondarily liable for the payment of the Loan; (ii) that Agent shall not be required to first institute suit or exhaust its remedies hereon against others liable for repayment of all or any part of the Loan, whether primarily or secondarily (collectively, the "Obligors"), or to perfect or enforce its rights against any Obligor or any security for the Loan; and (iii) that its liability for payment of the Loan shall not be affected or impaired by any determination that any security interest or lien taken by Agent for the benefit of Lenders to secure the Loan is invalid or unperfected. Borrower acknowledges, warrants and represents in connection with each waiver of any right or remedy of Borrower contained in any Loan Document, that it has been fully informed with respect to, and represented by counsel of its choice in connection with, such rights and remedies, and all such waivers, and after such advice and consultation, has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive or relinquish such rights and remedies to the full extent specified in each such waiver.

2.5 Loan Accounting.

2.5.1 Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.5.2 Notes.

At the request of any Lender, the Loan of such Lender shall be evidenced by a Note, with appropriate insertions, payable to the order of such Lender in a face principal amount equal to such Lender's Pro Rata Term Loan Share and payable in such amounts and on such dates as are set forth herein.

2.6 Payment of Interest.

2.6.1 Interest Rates.

(a) The outstanding principal balance under the Loan shall bear interest at a per annum rate of interest equal to the Contract Rate (as may be adjusted from time to time in accordance with this Section 2.6.1). Whenever, subsequent to the date hereof, the LIBOR Rate is increased or decreased (as determined on the date that is two (2) Business Days prior to each Payment Date), the Contract Rate, as set forth herein, shall be similarly changed effective as of such subsequent Payment Date, without notice or demand of any kind by an amount equal to the amount of such change in the LIBOR Rate on the date that is two (2) Business Days prior to each such Payment Date. The interest due on the principal balance of the Loan outstanding as of any Payment Date shall be computed for the actual number of days elapsed during the period in question on the basis of a year consisting of three hundred sixty (360) days and shall be calculated by determining the average daily principal balance outstanding for each day of such period in question. The daily rate shall be equal to 1/360th times the Contract Rate. If any statement furnished by Agent for the amount of a payment due exceeded the actual amount that should have been paid because the LIBOR Rate decreased and such decrease was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall receive a credit for the overpayment, which credit shall be applied towards the next subsequent payment due hereunder. If any statement furnished by Agent for the amount of a payment due was less than the actual amount that should have been paid because the LIBOR Rate increased and such increase was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall be required to pay any resulting underpayment with the next subsequent payment due hereunder.

(b) Borrower recognizes and acknowledges that any default on any payment, or portion thereof, due hereunder or to be made under any of the other Loan Documents, will result in losses and additional expenses to Agent in servicing the Loan, and in losses due to Lenders' loss of the use of funds not timely received. Borrower further acknowledges and agrees that in the event of any such Default, Lenders would be entitled to damages for the detriment proximately caused thereby, but that it would be extremely difficult and impracticable to ascertain the extent of or compute such damages. Therefore, upon the Term Loan Maturity Date (or upon any acceleration) and/or upon the election of Agent after the occurrence and during the existence of an Event of Default, interest shall automatically accrue hereunder at the Default Rate. The Agent shall give the Borrower written notice of any such request by the Required Lenders; provided, that, any failure by the Agent to provide such notice shall not relieve the Borrower of its obligation to pay interest at the Default Rate.

(c) Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under Applicable Law (collectively, "charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with Applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

2.6.2 Payments of Interest.

Borrower shall pay to Lenders, in cash, all accrued interest on the Loan in arrears on each Payment Date, upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. Any partial prepayment of the Loan shall be applied in inverse order of maturity and so shall not reduce the amount of any quarterly principal amortization payment required pursuant to Section 2.9.1 (but this shall not be construed as permitting any partial prepayment other than as may be expressly permitted elsewhere in this Agreement).

2.7 Fees.

(a) Origination Fee. Borrower shall pay to SWK, for its own account, a fee (the "Origination Fee") in the amount of $300,000, which Origination Fee shall be deemed fully earned and non-refundable on the Closing Date.

(b) Exit Fee. Upon the Termination Date, Borrower shall pay an exit fee (the "Exit Fee") to Agent, for the benefit of Lenders, in an amount equal to (*x*) six percent (6.0%) multiplied by (*y*) the aggregate principal amount of all Term Loans advanced hereunder, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date.

2.8 Prepayment.

2.8.1 Mandatory Prepayment. Borrower shall prepay the Obligations (which shall include (a) as it relates to any such prepayment made pursuant to this Section 2.8.1, on or after the Closing Date and prior to the first anniversary of the Closing Date, the amount of interest theretofore accrued but unpaid in respect of the principal amount so prepaid, plus the amount of interest that would have accrued on the principal amount so prepaid had it remained outstanding through the first anniversary of the Closing Date assuming the Contract Rate remained constant from the date of such prepayment through the first anniversary of the Closing Date or (b) as it relates to any such prepayment made on or after the first anniversary of the Closing Date, any amounts that would otherwise be due and payable on such date had Borrower voluntarily prepaid the Obligations in an equivalent amount pursuant to Section 2.8.2 until paid in full within two (2) Business Days after the receipt by a Loan Party of any Net Cash Proceeds in excess of $250,000 in any Fiscal Year (but only to the extent of such excess in such Fiscal Year) from any Disposition or Involuntary Disposition, in an amount equal to such Net Cash Proceeds.

2.8.2 Voluntary Prepayment.

(a) Subject to clause (b) below, Borrower may, on or after the first anniversary of the Closing Date, on at least five (5) Business Days' (or such shorter period as Agent may agree) written notice or telephonic notice (followed on the following Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 2:00 p.m. Dallas time on such day, prepay the Term Loan and all related Obligations in whole but not in part. Such notice to Agent shall specify the amount and proposed date of such prepayment, and the application of such amounts to be prepaid shall be applied in accordance with Section 2.9.1(b) or 2.10.2 (as applicable). For the avoidance of doubt, a permitted payment under this Section 2.8.2 is independent of and in addition to Revenue-Based Payments that are credited toward the principal of the Loans under Section 2.9.1(b).

(b) If Borrower makes a prepayment of the Term Loan under Section 2.8.2(a), it shall pay to Agent, for the benefit of Lenders, the following amounts (in addition to any such prepayment of the Term Loan and related Obligations) on the date of such prepayment: (i) if such prepayment is made on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, six percent (6%) of the aggregate amount of the Term Loan so prepaid; (ii) if such prepayment is made on or after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date, one percent (1%) of the aggregate amount of the Term Loan so prepaid; (iii) if such prepayment is made on or after the third anniversary of the Closing Date, zero percent (0%) of the aggregate amount of the Term Loan so prepaid.

(c) Notwithstanding anything set forth herein or in any other Loan Documents to the contrary, any prepayment of the Loans other than via (i) the application of Revenue-Based Payments made pursuant to Section 2.9.1 or Section 2.10.2, as applicable, (ii) prepayments in accordance with Section 2.8.1 or 3.4, or (iii) prepayments in connection with a Declined Permitted Acquisition, shall be limited and governed by this Section 2.8.2.

2.9 Repayment of Term Loan.

2.9.1 Revenue-Based Payment.

(a) During the period commencing on the date hereof until the Obligations are Paid in Full, Borrower promises to pay to Agent, for the account of each Lender according to its Pro Rata Term Loan Share, an amount based on a percentage of the Aggregate Revenue in each Fiscal Quarter (the "Revenue-Based Payment"), which will be applied to the Obligations as provided in clause (b) below. The Revenue-Based Payment with respect to each Fiscal Quarter shall be payable on the Payment Date next following the end of such Fiscal Quarter. Commencing with the Fiscal Quarter beginning January 1, 2018, the Revenue-Based Payment with respect to each Fiscal Quarter shall be equal to:

(i) the aggregate Revenue-Based Payments payable during the period commencing as of July 1 of the Fiscal Year of which such Fiscal Quarter is part, through the end of such Fiscal Quarter (such elapsed portion of the Fiscal Year, the "Elapsed Period"), calculated as the sum of:

(A) One hundred percent (100.00%) of Aggregate Revenue during the Elapsed Period up to and including $10,000,000; plus

(B) Fifty percent (50.00%) of Aggregate Revenue during the Elapsed Period greater than $10,000,000; minus

(ii) the aggregate amount of Revenue-Based Payments, if any, made with respect to prior Fiscal Quarters in such Fiscal Year;

provided that the Revenue-Based Payment is payable solely upon Aggregate Revenue in a given Fiscal Year, and will not be calculated on a cumulative, year-over-year basis.

For the avoidance of doubt, the amount of interest due on the first Payment Date will be calculated based on the number of days between the Closing Date and the applicable Payment Date.

(b) So long as no Event of Default has occurred and is continuing and until the Obligations have been Paid in Full, each Revenue-Based Payment on each applicable Payment Date will be applied in the following priority:

(i) FIRST, to the payment of all fees, costs, expenses and indemnities due and owing to Agent pursuant to Sections 2.7(a), 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, and any other Obligations owing to Agent in respect of sums advanced by Agent to preserve or protect the Collateral or to preserve or protect its security interest in the Collateral in accordance with this Agreement or the Collateral Documents;

(ii) SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to Lenders in respect of the Loans and Commitments pursuant to Sections 2.7, 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iii) THIRD, to the payment of all accrued but unpaid interest in respect of the Loans as of such Payment Date, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iv) FOURTH, as it relates to each applicable Payment Date on or after the Payment Date occurring in May 2020 to the payment of all principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, up to an aggregate amount of $1,250,000 on any such Payment Date;

(v) FIFTH, all remaining amounts to the Borrower.

In the event that the amounts distributed under this clause (b) on any Payment Date are insufficient for payment of the amounts set forth in clauses (i) through (iii) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency within five (5) Business Days of request by Agent. For the avoidance of doubt, at all times prior to the Payment Date in May 2020, Borrower shall only be required to pay Revenue-Based Payments to the extent of amounts owing under clauses (i), (ii), and (iii) above on each such Payment Date prior to the Payment Date in May 2020**.** Notwithstanding the foregoing, Borrower shall not be required to make any Revenue-Based Payments in excess of the aggregate amount owing under Section 2.9.1(b)(i)-(iv).

(c) In the event that Borrower makes any adjustment to Aggregate Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based Payment due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment hereunder. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based Payments.

2.9.2 Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loans and all other Obligations then due and owing shall be Paid in Full on the Termination Date.

2.10 Payment.

2.10.1 Making of Payments.

Except as set forth in the last sentence of this Section 2.10.1, all payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via wire or ACH transfer as directed by Agent in writing, not later than 1:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(b) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based Payment for the prior Fiscal Quarter, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

2.10.2 Application of Payments and Proceeds Following an Event of Default.

Following the occurrence and during the continuance of an Event of Default, or if the Obligations have otherwise become or have been declared to become immediately due and payable in accordance with this Agreement, then notwithstanding anything herein or in any other Loan Document to the contrary, Agent shall apply all or any part of payments in respect of the Obligations and proceeds of Collateral, in each case as received by Agent, to the payment of the Obligations in the order and priority as determined by Agent in its sole discretion.

2.10.3 Set-off.

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists, Agent and each Lender may, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent. Each Lender agrees to notify Borrower and Agent promptly after any such setoff and application, provided, that, the failure to give such notice shall not affect the validity of such setoff and application.

2.10.4 Proration of Payments.

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of set-off or otherwise, on account of principal of or interest on any Loan, but excluding any payment pursuant to Section 3.1, 3.2, 10.5 or 10.8) in excess of its applicable Pro Rata Term Loan Share of payments and other recoveries obtained by all Lenders on account of principal of and interest on such Term Loan then held by them, then such Lender shall purchase from the other Lenders such participations in the Loans held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided* that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

Section 3 Yield Protection.

3.1 Taxes.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder by or on behalf of Borrower to or for the account of Agent or any Lender shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, withholdings or other similar charges imposed by any Governmental Authority that is a taxing authority ("Taxes"), excluding (i) taxes imposed on or measured by Agent's or any Lender's net income (however denominated) or gross profits, and franchise taxes, in each case imposed by any jurisdiction (or subdivision thereof) under the laws of which Agent or such Lender is organized or in which Agent or such Lender conducts business or, in the case of any Lender, in which its applicable lending office is located, or imposed as a result of a present or former connection between Agent or such Lender and the jurisdiction imposing such Tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document), (ii) any branch profit taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Agent or a Lender is located or conducts business; (iii) in the case of any Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or designates a new lending office; (iv) in the case of any U.S. Lender, any United States federal backup withholding tax; and (v) taxes imposed under FATCA (items in clauses (i) through (v), "Excluded Taxes", and all Taxes other than Excluded Taxes, "Indemnified Taxes"). If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then Borrower shall: (*w*) make such withholding or deduction; (*x*) pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted; (*y*) as promptly as practicable forward to Agent the original or a certified copy of an official receipt or other documentation reasonably satisfactory to Agent evidencing such payment to such Governmental Authority; and (*z*) if the withholding or deduction is with respect to Indemnified Taxes, pay to Agent for the account of Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction of Indemnified Taxes been required. To the extent that any amounts shall ever be paid by Borrower in respect of Indemnified Taxes, such amounts shall, for greater certainty, be considered to have accrued and to have been paid by Borrower as interest on the Loans.

(b) Borrower shall indemnify Agent and each Lender for any Indemnified Taxes paid by Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of Borrower hereunder, and any additions to Tax, penalties and interest paid by Agent or such Lender with respect to such Indemnified Taxes; *provided* that Borrower shall not have any obligation to indemnify any party hereunder for any Indemnified Taxes or additions to Tax, penalties or interest with respect thereto that result from or are attributable to such party's own gross negligence or willful misconduct. Payment under this Section 3.1(b) shall be made within thirty (30) days after the date Agent or the Lender, as applicable, makes written demand therefor; *provided*, *however*, that if such written demand is made more than one-hundred eighty (180) days after the earlier of (i) the date on which Agent or the Lender, as applicable, pays such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto and (ii) the date on which the applicable Governmental Authority makes written demand on Agent or such Lender, as applicable, for payment of such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto, then Borrower shall not be obligated to indemnify Agent or such Lender for such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto.

(c) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in the remainder of this Section 3.1(c)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Each Foreign Lender that is a party hereto on the Closing Date or becomes an assignee of an interest under this Agreement under Section 10.8.1 after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

(i) Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;

(ii) two duly completed and executed originals of IRS Form W-8ECI;

(iii) a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that such Foreign Lender is not (*x*) a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, (*y*) a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (*z*) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC, together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or

(iv) if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BENE), IRS Form W-9 or a portfolio interest certificate described in clause (iii) above from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

Each Foreign Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent. Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c), or (B) if such Lender shall fail to comply with the certification requirements of this clause (c).

(d) Without limiting the foregoing, each Lender shall timely comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Agent any documentation prescribed by applicable law or such additional documentation reasonably requested by Borrower or Agent sufficient for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements.

(e) If Agent or a Lender determines that it is entitled to or has received a refund of any Taxes for which it has been indemnified by Borrower (or another Loan Party) or with respect to which Borrower (or another Loan Party) shall have paid additional amounts pursuant to this Section 3.1, it shall promptly notify Borrower of such refund, and promptly make an appropriate claim to the relevant Governmental Authority for such refund (if it has not previously done so). If Agent or a Lender receives a refund (whether or not pursuant to such claim) of such Taxes, it shall promptly pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Loan Parties under this Section 3.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that Borrower, upon the request of Agent or such Lender, agrees to repay to Agent or such Lender the amount paid over to Borrower in the event Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.1(e) shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to Borrower or any other Person or to alter its internal practices or procedures with respect to the administration of Taxes.

3.2 Increased Cost.

(a) If, after the Closing Date, the adoption of, or any change in, any applicable law, rule or regulation, or any change in the interpretation or administration of any applicable law, rule or regulation by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), or compliance by any Lender with any request or directive (whether or not having the force of law) issued after the Closing Date of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender; or (ii) shall impose on any Lender any other

condition affecting its ability to make loans based on the LIBOR Rate or its obligation to make loans based on the LIBOR Rate; and the result of anything described in clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any loan based on the LIBOR Rate, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Note with respect thereto, then within ten (10) Business Days of demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), and without duplication of other payment obligations of Borrower hereunder (including pursuant to Section 3.1), Borrower shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect. For the avoidance of doubt, this clause (a) will not apply to any such increased costs or reductions resulting from Taxes, as to which Section 3.1 shall govern. Notwithstanding anything to the contrary in this Section 3.2(a), it shall be a condition to a Lender's exercise of its rights, if any, under this Section 3.2(a) that such Lender shall generally be exercising similar rights with respect to borrowers under similar agreements.

(b) If any Lender shall reasonably determine that any change after the Closing Date in, or the adoption or phase-in after the Closing Date of, any applicable law, rule or regulation regarding capital adequacy, or any change after the Closing Date in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by any Lender or any Person controlling such Lender with any request or directive issued after the Closing Date regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by such Lender or such controlling Person to be material, then from time to time, within ten (10) Business Days of demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect. Notwithstanding anything to the contrary in this Section 3.2(b), it shall be a condition to a Lender's exercise of its rights, if any, under this Section 3.2(b) that such Lender shall generally be exercising similar rights with respect to borrowers under similar agreements.

(c) Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under this Section 3.2, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (i) make, issue, fund or maintain its Loans through another office of such Lender, or (ii) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to this Section 3.2 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such

Loans or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this clause (c) unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this clause (c) (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Agent) shall be conclusive absent manifest error.

3.3 Funding Losses.

Borrower hereby agrees that upon demand by any Lender (which demand shall be accompanied by a statement setting forth the basis for the amount being claimed, a copy of which shall be furnished to Agent), Borrower will indemnify such Lender against any net loss or expense which such Lender may sustain or incur (including any net loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain the Term Loans subject to the LIBOR Rate, as reasonably determined by such Lender, but excluding lost profits) as a result of (a) any payment or prepayment of any Term Loan of such Lender on a date other than a Payment Date or the Term Loan Maturity Date or (b) any failure of Borrower to borrow any Loan on a date specified therefor in a notice of borrowing pursuant to this Agreement. For the purposes of this Section 3.3, all determinations shall be made as if such Lender had actually funded and maintained each Term Loan through the purchase of deposits having a maturity corresponding to the Loan and bearing an interest rate equal to the LIBOR Rate during such period of time being measured.

3.4 Manner of Funding; Alternate Funding Offices.

Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it may determine at its sole discretion. Each Lender may, if it so elects, fulfill its commitment to make any Term Loan by causing any branch or Affiliate of such Lender to make such Loan; *provided* that in such event for the purposes of this Agreement (other than Section 3.1) such Loan shall be deemed to have been made by such Lender and the obligation of Borrower to repay such Loan shall nevertheless be to such Lender and shall be deemed held by it, to the extent of such Loan, for the account of such branch or Affiliate. Notwithstanding anything set forth in this Agreement, if any Lender requests compensation under Section 3.2, or if Borrower is required to pay any Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.1, or if any Lender gives a notice pursuant to Section 3.2, and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.4, or if any Lender is a Non-Consenting Lender, or if any Lender fails to fund the Subsequent Term Loan pursuant to the terms set forth herein, Borrower may prepay such Lender's Pro Rata Share of the Term Loans without having to prepay any other Lender's Pro Rata Share of the Term Loans and without the payment of any prepayment fee that would otherwise be payable by Borrower pursuant to Section 2.8.2(b).

3.5 Conclusiveness of Statements; Survival.

Determinations and statements of any Lender pursuant to Section 3.1, 3.2, 3.3 or 3.4 shall be conclusive absent demonstrable error. Lenders may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2, and the provisions of such Sections shall survive repayment of the Loans, cancellation of the Notes and termination of this Agreement.

Section 4 Conditions Precedent.

The Agreement shall become effective upon and the obligation of each Lender to make its Loan to be advanced on the Closing Date hereunder is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to Agent.

4.1 Prior Debt.

The Prior Debt has been (or concurrently with the initial borrowing will be) paid in full and all related Liens have been (or concurrently with the initial borrowing will be) released.

4.2 Delivery of Loan Documents.

Borrower shall have delivered the following documents in form and substance acceptable to Agent in its sole discretion (and, as applicable, duly executed and dated the Closing Date or an earlier date satisfactory to Agent):

(a) Loan Documents. The Loan Documents to which any Loan Party is a party, each duly executed by a Responsible Officer of each Loan Party and the other parties thereto (except Agent and the Lenders), and each other Person (except Agent and the Lenders) shall have delivered to Agent and Lenders the Loan Documents to which it is a party, each duly executed and delivered by such Person and the other parties thereto (except Agent and the Lenders).

(b) Financing Statements. Properly completed Uniform Commercial Code financing statements and other filings and documents required by law or the Loan Documents to provide Agent, for the benefit of Lenders, perfected first priority Liens in the Collateral.

(c) Lien Searches. Copies of Uniform Commercial Code, state and county search reports listing all effective financing statements filed and other Liens of record against any Loan Party, with copies of any financing statements and applicable searches of the records of the U.S. Patent and Trademark Office and the U.S. Copyright Office performed with respect to each Loan Party, all in each jurisdiction reasonably determined by Agent.

(d) [Reserved].

(e) Payoff; Release. Payoff letters with respect to the repayment in full of all Prior Debt, termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with Uniform Commercial Code or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(f) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified by the appropriate Governmental Authority, (ii) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction reasonably requested by Agent, (iii) bylaws (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) signature and incumbency certificates of its officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

(g) Closing Certificate. A certificate executed by a Responsible Officer of Borrower, which shall constitute a representation and warranty by Borrower as of the Closing Date that the conditions contained in this Section 4 have been satisfied (to the extent satisfaction of such condition is not subject to any Lender's or Agent's express approval) and shall contain as an exhibit thereto true, correct and complete copies of the material documents evidencing the Closing Date Acquisition.

(h) Opinions of Counsel. Opinions of counsel for each Loan Party, in form and substance acceptable to Agent, regarding certain closing matters, and Borrower hereby requests such counsel to deliver such opinions and authorizes Agent and Lenders to rely thereon.

(i) Insurance. Certificates or other evidence of insurance in effect as required by Section 6.3(c) and (d), with endorsements naming Agent as lenders' loss payee and/or additional insured, as applicable.

(j) Solvency Certificate. Agent shall have received a certificate of the chief financial officer (or, in the absence of a chief financial officer, the chief executive officer or manager) of Borrower, in his or her capacity as such and not in his or her individual capacity, in form and substance reasonably satisfactory to Agent, certifying as of the Closing Date that Borrower and its Subsidiaries, on a consolidated basis, are Solvent after giving effect to the transactions and the indebtedness contemplated by the Loan Documents.

(k) Financials. The financial statements, projections and pro forma balance sheet described in Section 5.4.

(l) [Reserved].

(m) Consents. Evidence that all necessary consents, permits and approvals (governmental or otherwise) required for the execution, delivery and performance by each Loan Party of the Loan Documents have been duly obtained and are in full force and effect.

(n) Other Documents. Such other certificates, documents and agreements as Agent or any Lender may reasonably request.

4.3 Fees. The Lenders and Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of their legal counsel), required to be paid under the Loan Documents on or before the Closing Date. All such amounts will be paid with proceeds of the initial advance of the Term Loan and any previous expense deposits made with Agent on or before the Closing Date and will be reflected in the funding instructions given by Borrower to Agent on or before the Closing Date.

4.4 Closing Date Warrant. Agent shall have received the fully executed Closing Date Warrant.

4.5 Representations, Warranties, Defaults. As of the Closing Date, after giving effect to the making of the Loans, (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all material respects as if made on and as of the Closing Date (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all material respects as of such earlier date) and (b) no Default or Event of Default shall exist. The acceptance of the Term Loans by Borrower shall be deemed to be a certification by Borrower that the conditions set forth in this Section 4.5 have been satisfied.

4.6 Diligence. Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be satisfactory in form and substance to Lenders, including, without limitation, (i) an examination of (A) Borrower's projected Aggregate Revenue for such periods as required by Lenders, (B) such valuations of Borrower and its assets as Lenders shall require (C) the terms and conditions of all obligations owed by Borrower deemed material by Lenders, the results of which shall be satisfactory in form and substance to Lenders and (D) background checks with respect to the managers, officers and owners of Borrower required by Agent; (ii) an examination of the Collateral, the financial statements and the books, records, business, obligations, financial condition and operational state of Borrower, and Borrower shall have demonstrated to Lender's satisfaction, in its sole discretion, that (*x*) no operations of Borrower are the subject of any governmental investigation, evaluation or any remedial action which could result in any expenditure or liability deemed material by Lenders, in their sole discretion, and (*y*) Borrower has no liabilities or obligations (whether contingent or otherwise) that are deemed material by Lenders, in their reasonable discretion.

4.7 Corporate Matters. All corporate and other proceedings, documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents (including, but not limited to, those relating to corporate and capital structures of Borrower) shall be satisfactory to Lenders in their sole discretion.

4.8 No Felonies or Indictable Offenses. No Loan Party nor, to the knowledge of any Responsible Officer of Borrower, any of their respective Affiliates nor any of their officers or key management personnel shall have been charged with or be under active investigation for a felony crime.

4.9 No Material Adverse Effect. There shall not be any Debt or material obligations (other than those permitted pursuant to Section 7.1 hereof or as otherwise set forth in the Disclosure Letter) of any nature with respect to any Loan Party, the default of which could reasonably be likely to have a Material Adverse Effect.

4.10 Minimum Capital Raise. Borrower shall have issued additional common Equity Interests, on terms and conditions satisfactory to Agent, in an amount equal to 19.9% of the Borrower's issued and outstanding common shares immediately prior to the Closing, less the number of Borrower's common shares underlying the Closing Date Warrant.

4.11 Closing Date Acquisition. Agent shall have received fully-executed copies of the Acquisition Agreement, including all annexes, exhibits and schedules thereto, together with all other material documents and agreements delivered in connection therewith, in each case, dated as of the date hereof, by and among, among others, Borrower and Icon Bioscience, Inc., and shall be satisfied, in its sole discretion, that the closing of the transactions contemplated therein (such transactions, herein referred to as the "Closing Date Acquisition") shall occur immediately following the making of the Initial Advance under this Agreement.

For purposes of determining compliance with the conditions specified in this Section 4, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 5 Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date and the date of the Subsequent Term Loan made by Lenders pursuant to Section 2.2.2, that:

5.1 Organization.

Each Loan Party is validly existing and in good standing under the laws of its state or country of jurisdiction, which as of the Closing Date is as set forth on Schedule 5.1 to the Disclosure Letter, and is duly qualified to do business in each jurisdiction in which failure to so qualify could reasonably be likely to have or result in a Material Adverse Effect, which as of the Closing Date are those jurisdictions set forth on Schedule 5.1 to the Disclosure Letter.

5.2 Authorization; No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guaranty monies hereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) in any material respect, any provision of applicable law (including any Health Care Law), (ii) the charter, by-laws or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the Closing Date) any Material Contract, or any material judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents).

5.3 Validity; Binding Nature.

Each of this Agreement and each other Loan Document to which any Loan Party is a party, as applicable, is the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness.

5.4 Financial Condition.

(a) The audited consolidated financial statements of Borrower and its Subsidiaries for the Fiscal Year 2017, copies of each of which have been delivered pursuant hereto, were prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition of Borrower and its Subsidiaries as at such dates and the results of its operations for the periods then ended.

(b) The consolidated financial projections of Borrower and its Subsidiaries for the period ending December 31, 2022 delivered to Agent and Lenders on or prior to the Closing Date (i) were prepared by Borrower in good faith and (ii) were prepared in accordance with assumptions for which Borrower believes it has a reasonable basis, (it being understood that the projections are not a guaranty of future performance and that actual results during the period covered by the projections may materially differ from the projected results therein).

5.5 No Material Adverse Change.

Since June 30, 2017, there has been no material adverse change in the financial condition, operations, assets, business or properties of Borrower and its Subsidiaries taken as a whole.

5.6 Litigation.

No litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to the knowledge of any Responsible Officer of Borrower, threatened against any Loan Party that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. As of the Closing Date, other than any liability incidental to such litigation or proceedings, no Loan Party has any material Contingent Obligations not listed on Schedule 7.1 to the Disclosure Letter or disclosed in the financial statements specified in Section 5.4(a) or in any interim unaudited financial statements filed on Form 10-Q with the Securities and Exchange Commission.

5.7 Ownership of Properties; Liens.

Borrower and each other Loan Party owns, or leases, as applicable, all of its material properties and assets, tangible and intangible, of any nature whatsoever necessary or used in the ordinary conduct of its business (including Intellectual Property), free and clear of all Liens, except Permitted Liens and as otherwise set forth on Schedule 5.7 to the Disclosure Letter.

5.8 Capitalization.

All issued and outstanding Equity Interests of Borrower and its Subsidiaries are duly authorized, validly issued, fully paid, if a corporation, non-assessable, and such securities were issued in compliance in all material respects with all applicable state and federal laws concerning the issuance of securities. Schedule 5.8 to the Disclosure Letter sets forth the authorized Equity Interests of Borrower and each of its Subsidiaries as of the Closing Date as well as all Persons owning more than ten percent (10%) of the outstanding Equity Interests in each such Person as of the Closing Date.

5.9 Pension Plans.

As of the Closing Date and unless otherwise disclosed to Agent in writing thereafter, no Loan Party has a Pension Plan.

5.10 Investment Company Act.

No Loan Party is an "investment company" within the meaning of the Investment Company Act of 1940.

5.11 No Default.

No Event of Default or Default exists or would result from the incurrence by Borrower of any Debt hereunder or under any other Loan Document or as a result of any Loan Party entering into the Loan Documents to which it is a party.

5.12 Margin Stock.

No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. As of the Closing Date, no portion of the Obligations is secured directly or indirectly by Margin Stock.

5.13 Taxes.

Each Loan Party has filed, or caused to be filed, all federal and state income, and other material tax returns and reports, including any material foreign tax returns and reports, required by law to have been filed by it and has paid all federal and state income, and other material taxes and governmental charges, including any material foreign taxes and governmental charges, thereby shown to be owing, except any such taxes or charges (a) that are not delinquent or (b) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books.

5.14 Solvency.

On the Closing Date, and immediately prior to and after giving effect to the borrowing hereunder and the use of the proceeds hereof, Borrower and the other Loan Parties are, on a consolidated basis, Solvent.

5.15 Environmental Matters.

The on-going operations of Loan Parties comply in all respects with all applicable Environmental Laws, except for non-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Effect. Each Loan Party has obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for its respective ordinary course operations, and each Loan Party is in compliance with all material terms and conditions thereof, except where the failure to obtain, maintain or comply would not reasonably be expected to result in a Material Adverse Effect. (i) As of the Closing Date and (ii) except as could not reasonably be expected to result in a Material Adverse Effect, as

of the date of the Subsequent Term Loan made by Lenders pursuant to Section 2.2.2, neither Borrower, any of its Subsidiaries nor any of their respective properties or operations is subject to any outstanding written order from or agreement with any federal, state, or local Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance. There are no Hazardous Substances or other environmental conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, owned, operated or conducted by any Loan Party that would reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, no Loan Party owns or operates underground storage tanks.

5.16 Insurance.

Loan Parties and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Parties operate, as applicable. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth on Schedule 5.16 to the Disclosure Letter.

5.17 Information.

All written information (other than financial projections, estimates and other forward-looking information, and information of a general economic or industry specific nature) heretofore or contemporaneously herewith furnished in writing by Borrower to Agent or any Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, is, and all written information hereafter furnished by or on behalf of Borrower to Agent or any Lender pursuant hereto or in connection herewith, taken as a whole, will be true and accurate in every material respect on the date as of which such information, taken as a whole, is dated or certified, and none of such information is or will be when furnished incomplete by omitting to state any material fact necessary to make such information not misleading in any material respect in light of the circumstances under which made (it being recognized by Agent and Lenders that any projections and forecasts provided by Borrower are based on good faith estimates and assumptions believed by Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

5.18 Intellectual Property; Products and Services.

(a) Schedule 5.18(a)(i) to the Disclosure Letter as of the Closing Date accurately and completely lists all Registered Intellectual Property of a Loan Party. Except as otherwise set forth on Schedule 5.18(a)(ii) hereto, each Loan Party owns and possesses or has a license or other right to use all Intellectual Property as is necessary for the conduct of, and material to, the business of the Loan Parties, taken as a whole, without any infringement upon the intellectual property rights of others, (x) in any material manner as of the Closing Date and (y) except as could not reasonably be expected to result in a Material Adverse Effect as of the date of the Subsequent Term Loan made by Lenders pursuant to Section 2.2.2.

(b) Schedule 5.18(b)(i) as of the Closing Date accurately and completely lists all Products, Material Services, and all Material Required Permits in relation thereto, and Borrower has delivered to Agent a copy of all Required Permits as of the date hereof requested by Agent..

(c) With respect to any Material Product or Material Service being tested, manufactured, marketed, sold, and/or delivered by Loan Parties, the applicable Loan Party has received (or the applicable, authorized third parties have received), and such Product or Service is the subject of, all Material Required Permits needed in connection with the testing, manufacture, marketing, sale, and/or delivery of such Product or Service by or on behalf of Loan Parties as currently conducted. (i) As of the Closing Date and (ii) except as could not reasonably be expected to result in a Material Adverse Effect, as of the date of the Subsequent Term Loan made by Lenders pursuant to Section 2.2.2,, no Loan Party has received any written notice from any applicable Governmental Authority, specifically including the FDA and/or CMS, that such Governmental Authority is conducting an investigation or review (other than a normal routine scheduled inspection) of any Loan Party's (*x*) manufacturing facilities, laboratory facilities, the processes for such Product, or any related sales or marketing activities and/or the Material Required Permits related to such Product, and (*y*) laboratory facilities, the processes for such Services, or any related sales or marketing activities and/or the Material Required Permits related to such Services. There are no material deficiencies or violations of applicable laws in relation to the manufacturing, processes, sales, marketing, or delivery of such Product or Material Services and/or the Material Required Permits related to such Product or Services, the effect of which could reasonably be expected to adversely impact Aggregate Revenues in an material respect, no Material Required Permit has been revoked or withdrawn, nor, to the knowledge of any Responsible Officer of Borrower, has any such Governmental Authority issued any written order or recommendation stating that the development, testing, manufacturing, sales and/or marketing of such Product or Services by or on behalf of Loan Parties should cease or be withdrawn from the marketplace, as applicable, the effect of which could reasonably be expected to adversely impact Aggregate Revenues in an material respect.

(d) Except as set forth on Schedule 5.18(b)(ii) to the Disclosure Letter, (A) there have been no material adverse clinical test results in respect of any Product since the date on which the applicable Loan Party acquired rights to such Product, and (B) there have been no material product recalls or voluntary product withdrawals from any market in respect of any Product since the date on which the applicable Loan Party acquired rights to such Product, in each case, (x) as of the Closing Date and (y) except as could not reasonably be expected to result in a Material Adverse Effect as of the date of the Subsequent Term Loan made by Lenders pursuant to Section 2.2.2.

(e) No Loan Party has experienced any significant failures in its manufacturing of any Product which caused any reduction in Products sold (x) in any material respects as of the Closing Date and (y) except as could not reasonably be expected to result in a Material Adverse Effect as of the date of the Subsequent Term Loan made by Lenders pursuant to Section 2.2.2.

5.19 [Reserved].

5.20 Labor Matters.

As of the Closing Date and unless otherwise disclosed to Agent in writing thereafter, no Loan Party is subject to any labor or collective bargaining agreement. There are no existing or threatened strikes, lockouts or other labor disputes involving any Loan Party that singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of each Loan Party are not in violation in any material respect of the Fair Labor Standards Act or any other applicable law, rule or regulation dealing with such matters. Each Loan Party has fully and timely made any and all social benefits and pension contributions and payments required to be made by such Loan Party according to any applicable law or agreement for which any failure to comply would reasonably be expected to have a Material Adverse Effect.

5.21 Material Contracts.

Except for the agreements set forth on Schedule 5.21 to the Disclosure Letter (collectively, the "Material Contracts"), as of the Closing Date there are no (i) employment agreements covering the management of any Loan Party, (ii) collective bargaining agreements or other labor agreements covering any employees of any Loan Party, (iii) agreements for managerial, consulting or similar services to which any Loan Party is a party or by which it is bound, (iv) agreements regarding any Loan Party, its assets or operations or any investment therein to which such Loan Party and any of its equity holders are a party, (v) patent licenses, trademark licenses, copyright licenses or other lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee (other than widely-available software subject to "shrink-wrap" or "click-through" software licenses), (vi) distribution, marketing or supply agreements to which any Loan Party is a party, (vii) customer agreements to which any Loan Party is a party, (viii) partnership agreements pursuant to which any Loan Party is a partner, limited liability company agreements pursuant to which any Loan Party is a member or manager, or joint venture agreements to which any Loan Party is a party (in each case other than the applicable Loan Parties' organizational documents), (ix) real estate leases (in each case with respect to any agreement of the type described in the preceding clauses (i) through (ix) requiring payments or contributions in the aggregate of more than $250,000 in any Fiscal Year), or (x) any other agreements or instruments to which any Loan Party is a party, in each case the breach, nonperformance or cancellation of which, would reasonably be expected to have a Material Adverse Effect. Schedule 5.21 to the Disclosure Letter sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.22 Compliance with Laws; Health Care Laws.

(a) Laws Generally. Each Loan Party is in compliance with, and is conducting and has conducted its business and operations in material compliance with the requirements of all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

(b) Health Care Laws. Without limiting the generality of clause (a) above:

(i) No Loan Party is in violation of any applicable Health Care Laws, except for any such violation which would not reasonably be expected (either individually or taken as a whole with any other violations) to have a Material Adverse Effect.

(ii) (a) Each Loan Party (either directly or through one or more authorized third parties) has all licenses, consents, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an "Authorization") necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to have would not reasonably be expected to have a Material Adverse Effect, and (b) no Responsible Officer of any Loan Party has knowledge that any Governmental Authority is in the process of or has commenced proceedings to limit, suspend or revoke any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities having jurisdiction with respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

(iii) Each Loan Party has received and maintains accreditation in good standing and without limitation or impairment by all applicable accrediting organizations, to the extent required by applicable law or regulation (including any foreign law or equivalent regulation), except where the failure to be so accredited and in good standing without limitation would not reasonably be expected to have a Material Adverse Effect.

(iv) Except where any of the following would not reasonably be expected to have a Material Adverse Effect, no Loan Party has been, or to the knowledge of a Responsible Officer has been threatened in writing to be, (i) excluded from participation in federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) pursuant to 42 U.S.C. §1320a-7 or any related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws or regulations, or (iii) made a party to any other action by any Governmental Authority that would likely prohibit it from selling Products to any governmental or other purchaser pursuant to any Health Care Law.

(v) No Loan Party has received any written notice from the FDA, CMS, or any other Governmental Authority with respect to, nor to the knowledge of any Responsible Officer is there, any actual or pending investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding by the FDA, CMS, or any other Governmental Authority against any Loan Party regarding any violation of applicable law, except for such investigations, inquiries, or administrative or judicial actions, hearings, or enforcement proceedings which, individually and in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.23 Existing Indebtedness; Investments, Guarantees and Certain Contracts.

As of the Closing Date, no Loan Party (a) except as set forth on Schedule 7.1 to the Disclosure Letter, has any outstanding Debt in excess of $25,000 individually and $50,000 in the aggregate, except Debt under the Loan Documents and except for intercompany Debt, or (b) except as set forth on Schedule 7.10 to the Disclosure Letter, owns or holds any equity or long-term debt investments in, or has any outstanding advances to (other than trade credit extended in the ordinary course of business) or any outstanding guarantees for the obligations of any other Person (other than another Loan Party or a Subsidiary of a Loan Party), in each case, with a value in excess of $25,000 individually and $50,000 in the aggregate.

5.24 Affiliated Agreements.

Except as set forth on Schedule 7.7, transactions, arrangements or contracts otherwise permitted by Section 7.7 and employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's Affiliates, on the other hand.

5.25 Names; Locations of Offices, Records and Collateral; Deposit Accounts.

During the past five years preceding the Closing Date, no Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) other than such names set forth on Schedule 5.25A to the Disclosure Letter. Except as any Loan Party may change its legal name from time to time in accordance with the Loan Documents, each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A to the Disclosure Letter, and any and all business done and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains as of the Closing Date, and during the past five years preceding the Closing Date has maintained, respective places of business only at the locations set forth on Schedule 5.25B to the Disclosure Letter, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations as of the Closing Date (other than (i) Deposit Accounts, securities accounts, commodities accounts and other investment accounts, (ii) Collateral in the possession of Agent, for the benefit of Lenders, and (iii) Collateral in transit, out for repair or at customer locations in the ordinary course of business). Schedule 7.14 to the Disclosure Letter lists all of Loan Parties' Deposit Accounts (including all Exempt Accounts) as of the Closing Date. As of the Closing Date, all of the tangible Collateral is located exclusively within the United States.

5.26 Non-Subordination.

The payment and performance of the Obligations by Loan Parties are not subordinated in any way to any other obligations of such Loan Parties or to the rights of any other Person.

5.27 Broker's or Finder's Commissions.

Except as set forth in Schedule 5.27 to the Disclosure Letter, no broker's, finder's or placement fee or commission will be payable to any broker or agent engaged by any Loan Party or any of its officers, directors or agents with respect to the Loan or the transactions contemplated by this Agreement except for fees payable to Agent and Lenders.

5.28 Anti-Terrorism; OFAC.

(a) No Loan Party nor any Person controlling or controlled by a Loan Party, nor, to the knowledge of any Responsible Officer of Borrower, any Person having a beneficial interest in a Loan Party, nor any Person for whom a Loan Party is acting as agent or nominee in connection with this transaction (1) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner violative of Section 2 of such executive order, or (3) is a Person on the list of Specially Designated Nationals and Blocked Persons or is in violation of the limitations or prohibitions under any other OFAC regulation or executive order.

(b) No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.29 Security Interest.

Each Loan Party has full right and power to grant to Agent, for the benefit of itself and the other Lenders, a perfected, first priority (subject to Permitted Liens) security interest and Lien on the Collateral pursuant to this Agreement and the other Loan Documents, as applicable, subject to the following sentence. Upon the execution and delivery of this Agreement and the other Loan Documents, and upon the filing of the necessary UCC financing statements and the IP Security Agreement, the delivery of control agreements with respect to Deposit Accounts (other than Exempt Accounts) and/or delivery of the necessary certificates evidencing any equity interest, together with stock powers, without any further action, Agent will have a good, valid and first priority (subject to Permitted Liens) perfected Lien and security interest in the Collateral that can be perfected by such actions, for the benefit of Lenders.

5.30 Survival.

Borrower hereby makes the representations and warranties contained herein with the knowledge and intention that Agent and Lenders are relying and will rely thereon. All such representations and warranties will survive until Payment in Full of the Obligations (and will survive, for the avoidance of doubt, the execution and delivery of this Agreement, the closing and the making of the Loan).

Section 6 Affirmative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, it will:

6.1 Information.

Furnish to Agent (which shall furnish to each Lender):

6.1.1 Annual Report.

Promptly when available and in any event within ninety (90) days after the close of each Fiscal Year: (a) a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (i) a consolidated balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants or to the extent any such qualification results solely form a current maturity of the Loans) by Deloitte Touche Tohmatsu Limited or another independent auditor of recognized standing selected by Borrower and reasonably acceptable to Agent (for purposes of clarity, a "going concern" statement or explanatory note shall not be a qualification for purposes of any audited reports delivered prior to the Fiscal Year ending June 2019), and (ii) a comparison with the previous Fiscal Year; and (b) upon Agent's reasonable request, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated statements of earnings and cash flows for Borrower and its Subsidiaries for such Fiscal Year, together with a comparison of actual results for such Fiscal Year with the budget for such Fiscal Year, certified by a Responsible Officer of Borrower.

6.1.2 Interim Reports.

(a) Promptly when available and in any event within forty-five (45) days after the end of each Fiscal Quarter, unaudited consolidated balance sheets of Borrower and its Subsidiaries as of the end of such Fiscal Quarter together with a comparison as of the end of the previous Fiscal Year, together with a consolidated statement of earnings for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter and a consolidated statement of cash flows for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form), certified by a Responsible Officer of Borrower.

(b) (i) Together with each such quarterly report to be delivered pursuant to clause (a) above (other than the last Fiscal Quarter of any Fiscal Year), Borrower shall provide to Agent a written statement of Borrower's management setting forth a summary discussion of Borrower's financial condition, changes in financial condition and results of operations, which may be included in the Form 10-Q and or Form 10-K, as applicable, filed with the Securities and Exchange Commission, (ii) together with each such quarterly report to be delivered pursuant to clause (a) above, Borrower shall deliver to Agent a copy of each material written demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Receivables for all Loan Parties, and (iii) together with each such annual report to be delivered pursuant to Section 6.1.1 above, Borrower shall provide to Agent updated Schedules 5.16, 5.18(a)(i), 5.18(b)(i) and 5.21 to Disclosure Letter, as applicable, setting forth any changes to the disclosures set forth in such schedules as most recently provided to Agent or, as applicable, a written statement of Borrower's management stating that there have been no changes to such disclosures as most recently provided to Agent.

(c) Documents required to be delivered pursuant to Section 6.1.1 or 6.1.2(a), 6.1.2(b)(i), 6.1.5 or Section 6.1.10 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet at the website address listed on Annex II, or (ii) on which such documents are posted on Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided, that: Borrower shall notify the Agent (by facsimile or electronic mail) of the posting of any such documents and if requested by the Agent or any Lender, provide to the Agent or such Lender by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower with any such request for delivery by a Lender, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

6.1.3 Revenue-Based Payment Reconciliation.

Upon Agent's reasonable request Borrower shall furnish to Agent, a report, in form reasonably acceptable to Agent, reconciling the revenue reported by Borrower to Agent during any reporting period to the Aggregate Revenue reported by Borrower hereunder for such period and the amount of Revenue-Based Payment(s) made by Borrower in connection with such period(s).

6.1.4 Compliance Certificate.

Contemporaneously with the furnishing of a copy of each annual audit report pursuant to Section 6.1.1 and each set of quarterly statements pursuant to Section 6.1.2, a duly completed Compliance Certificate, with appropriate insertions, dated the date of delivery and corresponding to such annual report or such quarterly statements, and signed by a Responsible Officer of Borrower, containing a computation showing compliance with Section 7.13 and a statement to the effect that such officer has not become aware of any Event of Default or Default that exists or, if there is any such event, describing it and the steps, if any, being taken to cure it.

6.1.5 Reports to Governmental Authorities and Shareholders.

To the extent not publicly available on the Securities and Exchange Commission's EDGAR system, or any successor thereto, promptly upon the filing or sending thereof, copies of (a) all regular, periodic or special reports of each Loan Party filed with any Governmental Authority, (b) all registration statements (or such equivalent documents) of each Loan Party filed with any Governmental Authority and (c) all proxy statements or other communications made to the holders of Borrower's Equity Interests generally, in each case, other than those reports, statements or other communications that are administrative or ministerial in nature.

6.1.6 Notice of Default; Litigation.

Promptly upon any Responsible Officer of Borrower becoming aware of any of the following, written notice describing the same and the steps being taken by Borrower or the applicable Loan Party affected thereby with respect thereto:

(a) the occurrence of an Event of Default;

(b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of any Responsible Officer of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in any case would reasonably be expected to have a Material Adverse Effect;

(c) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent;

(d) any cancellation or material adverse change in any insurance maintained by Borrower or any other Loan Party;

(e) any other event (including (i) any violation of any law, including any Environmental Law, or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule or regulation) which could reasonably be expected to have a Material Adverse Effect; or

(f) to the extent that it would reasonably be expected to result in a Material Adverse Effect (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for Borrower or any other Loan Party, is threatened in writing or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non-compliance with any applicable Health Care Law, (iv) the occurrence of any violation of any applicable Health Care Law by Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that could reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) any officer, employee or agent of Borrower or any of the other Loan Parties is convicted of any crime or has engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) any officer, employee or agent of Borrower or any of the other Loan Parties has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

6.1.7 Management Report.

Promptly upon receipt thereof, copies of all detailed financial and management reports submitted to Borrower or any other Loan Party by independent auditors in connection with each annual audit or interim review made by such auditors of the books of Borrower or any other Loan Party.

6.1.8 Projections.

As soon as practicable, and in any event not later than sixty (60) days after the commencement of each Fiscal Year (each, a "Subject Fiscal Year"), financial projections of revenues and EBITDA for Borrower and the Subsidiaries (i) on a quarterly basis for such Subject Fiscal Year and the next two (2) Fiscal Quarters immediately following such Subject Fiscal Year (such six (6) Fiscal Quarter Period, a "Subject Period"), (ii) on a quarterly basis for the next two (2) Fiscal Quarters immediately following such Subject Period and (iii) on an annual basis for the second Fiscal Year following such Subject Fiscal Year, prepared in a manner consistent with the projections delivered by Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a chief financial officer (or other executive or financial officer) of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections as of the time such assumptions were made and (c) such projections have been prepared in accordance with such assumptions. For the avoidance of doubt, Agent and the Lenders acknowledge and agree that the financial projections delivered pursuant to clauses (ii) and (iii) above are being delivered by Borrower solely for informational purposes and will not be used in any determination of the financial covenants set forth in Sections 7.13.2 and 7.13.3.

6.1.9 Updated Schedules to Guarantee and Collateral Agreement.

Contemporaneously with the furnishing of each annual audit report pursuant to Section 6.1.1, updated versions of the Schedules to the Guarantee and Collateral Agreement showing information as of the date of such audit report (it being agreed and understood that this requirement shall be in addition to the notice and delivery requirements set forth in the Guarantee and Collateral Agreement).

6.1.10 Other Information.

From time to time as Agent reasonably requests, Borrower shall promptly deliver or shall cause to be delivered to Agent:

(a) copies of any reports, statements or written materials (other than routine or ministerial communications (electronic or otherwise) between Borrower or its Affiliates and such entities that are not material in nature) in relation to any Material Contract;

(b) such other information concerning Borrower and any other Loan Party as Agent may reasonably request;

(c) copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority; and

(d) copies of (*x*) any notices or other written communications relating to any breach, default, or event of default with respect to any Debt listed on Schedule 7.1 to the Disclosure Letter and (*y*) any other material modifications or amendments entered into in relation to any Debt listed on Schedule 7.1 to the Disclosure Letter.

6.2 Books; Records; Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause each other Loan Party to permit (at any reasonable time and with reasonable notice), Agent or any representative thereof to inspect the properties and operations of Borrower or any other Loan Party; and permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), Agent (accompanied by any Lender) or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with any Lender or Agent or any representative thereof and to the extent such discussion is not in respect of the results of the annual audit or the restatement of any such annual audit, a representative of the Borrower shall be provided a reasonable opportunity to participate in any such discussion), and to examine (and, at the expense of Borrower or the applicable Loan Party, photocopy extracts from) any of its books or other records; and permit, and cause each other Loan Party to permit, (at any reasonable time and with reasonable notice) Agent and its representatives to inspect the Collateral and other tangible assets of Borrower or Loan Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral; provided, however, so long as no Event of Default exists, only Agent may exercise rights under this Section 6.2 and the Agent shall not exercise such rights more often than one (1) time in any Fiscal Year. All such visits and examinations pursuant to this Section 6.2 shall comply with the Borrower's or its Subsidiaries' policies and protocols for safety for

visitors to its facilities, including visits to any manufacturing areas. Notwithstanding anything to the contrary in this Section 6.2 or any other provision of the Loan Documents, none of the Borrower nor any of its Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) in respect of which disclosure to the Agent or a Lender (or its respective representatives or contractors) is prohibited by law, fiduciary duty or third-party contractual obligations (not created in contemplation thereof), or would violate any of its obligations with respect to the privacy or confidentiality of patient information or (b) is subject to attorney-client or similar privilege or constitutes attorney work product; provided, that, in each case, Borrower shall notify Agent of such prohibition or privilege.

6.3 Conduct of Business; Maintenance of Property; Insurance.

(a) Borrower shall, and shall cause each other Loan Party to, (i) conduct its business in accordance with its current business practices or otherwise as it may determine in its reasonable business judgment, (ii) engage principally in the same or similar lines of business substantially as heretofore conducted or any business reasonably related or incidental thereto or which constitutes a reasonable extension or expansion thereof, (iii) collect the Royalties in the ordinary course of business or otherwise as it may determine in its reasonable business judgment, (iv) maintain all of its material Collateral used or useful in its business in good repair, working order and condition (normal wear and tear and casualty and condemnation events excepted and except as may be disposed of in accordance with the terms of the Loan Documents), (v) from time to time to make all necessary repairs, renewals and replacements to the Collateral required for the conduct of Borrower and Loan Parties business in accordance with its current business practices; (vi) maintain and keep in full force and effect all material Permits and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction in which the ownership or lease of property or the nature of its business makes such Permits or qualification necessary and in which failure to maintain such Permits or qualification could reasonably be expected to be, have or result in a Material Adverse Effect; (vii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (viii) maintain, comply with and keep in full force and effect all Intellectual Property and Permits necessary to conduct its business, except in each case where the failure to maintain, comply with or keep in full force and effect could not reasonably be expected to be, have or result in a Material Adverse Effect.

(b) Borrower shall keep, and cause each other Loan Party to keep, all property necessary in the business of Borrower or each other Loan Party in good working order and condition, ordinary wear and tear and casualty and condemnation events excepted.

(c) Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is (i) customarily maintained by Persons operating in the same geographical region as Borrower that are (A) subject to any applicable Health Care Laws, or (B) otherwise delivering to customers products or services similar to the Services (in each case, as determined by Agent in its reasonable discretion), and (ii) otherwise in form, substance, and amounts acceptable to Agent in its reasonable discretion; *provided* that in any event, such insurance shall, unless the Agent otherwise agrees, insure against all risks and liabilities of the type insured against as of the Closing Date and shall have insured amounts (other than in the case of casualty or property insurance) no less than, and deductibles no higher than, those amounts provided for as of the Closing Date; *provided further*, that, Agent agrees the insurance maintained by Borrower on the Closing Date is acceptable. Upon request of Agent, Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the

nature and extent of all insurance maintained by Borrower and each other Loan Party. Borrower shall cause each issuer of an insurance policy in respect of property or casualty or general liability insurance to provide Agent with an endorsement (*x*) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of general liability insurance promptly upon request by Agent, (*y*) providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice if the Agent consents to such shorter notice) before the termination or cancellation of the policy prior to the expiration thereof and (*z*) reasonably acceptable in all other respects to Agent. Notwithstanding the foregoing, so long as no Event of Default exists, Borrower and its Subsidiaries may retain all or any portion of the proceeds of any insurance of Borrower and its Subsidiaries (and Agent shall promptly remit to Borrower or the applicable Subsidiary any proceeds with respect to such insurance received by Agent).

(d) Unless Borrower provides Agent with evidence of the continuing insurance coverage required by this Agreement, Agent (upon reasonable advance notice to Borrower) may purchase insurance at Borrower's expense to protect Agent's and Lenders' interests in the Collateral. This insurance shall protect Borrower's and each other Loan Party's interests. The coverage that Agent purchases shall pay any claim that is made against Borrower or any other Loan Party in connection with the Collateral. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Borrower will be responsible for the reasonable costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance, and such costs of the insurance may be added to the principal amount of the Loans owing hereunder.

6.4 Compliance with Laws; Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations, (d) file, or cause to be filed, all federal and state income, and other material tax returns, including any material foreign tax returns and reports, and reports required by law to be filed by any Loan Party, and (e) pay, and cause each other Loan Party to pay, prior to delinquency, all federal and state income and other material taxes and other material governmental charges, including any material foreign taxes and governmental charges, against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property; *provided* that the foregoing shall not require Borrower or any other Loan Party to pay any such tax, charge or claim so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP. For purposes of this Section 6.4, "Control" shall mean, when used with respect to any Person, (*x*) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (*y*) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

6.5 Maintenance of Existence.

Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing would not reasonably be expected to have a Material Adverse Effect.

6.6 Employee Benefit Plans.

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of $250,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law and regulations.

6.7 Environmental Matters.

Except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, if any release or disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets owned, leased or operated by Borrower or any other Loan Party, Borrower shall cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply in all material respects with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, Borrower shall, and shall cause each other Loan Party to, comply with each valid Federal or state judicial or administrative order requiring the performance at any real property by Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance.

6.8 Further Assurances.

Take, and cause each other Loan Party to take, such actions as are necessary or as Agent or the Required Lenders may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower, Icon and each Wholly-Owned Domestic Subsidiary of Borrower (other than any Excluded Subsidiary) in accordance with the other provisions of this Agreement and the provisions of any Collateral Documents (as well as (i) 100% of the issued and outstanding Equity Interests of each Wholly-Owned Domestic Subsidiary (other than any Foreign Subsidiary Holding Company) and (ii)(x) 65% (or such greater percentage that, due to a change in an applicable law after the Closing Date, (A) could not reasonably be expected to cause the undistributed earnings of such Wholly-Owned Foreign Subsidiary or Foreign Subsidiary Holding Company as determined for United States federal income tax purposes to be treated as a deemed dividend to such Subsidiary's United States parent and (B) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and (y) 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)), in each Wholly-Owned Foreign Subsidiary and Foreign Subsidiary Holding Company, in each case, directly owned by a Loan Party) and guaranteed by Icon and all of the other Domestic Subsidiaries of Borrower (other than any Excluded Subsidiary) existing as of, or immediately following as it relates to Icon, the Closing Date (including, promptly upon the acquisition or creation thereof, any Wholly-Owned Domestic Subsidiary of Borrower (other than any Excluded Subsidiary) acquired or created after the

Closing Date, and in any event no later than thirty (30) days after the date such Subsidiary was acquired or created), in each case including (a) the execution and delivery of a joinder to the Guarantee and Collateral Agreement in the form attached thereto, mortgages and deeds of trust in respect of any real property with a fair market value in excess of $1,000,000 owned by a Loan Party, financing statements and other documents reasonably required by Agent, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession as required by Agent but excluding the requirement for the Loan Parties to execute and deliver any Excluded Collateral as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any domestic location where Collateral with a value in excess of $250,000 is held or otherwise stored from time to time.

6.9 Compliance with Health Care Laws.

(a) Without limiting or qualifying Section 6.4 or any other provision of this Agreement, Borrower will comply, and will cause each other Loan Party and each Subsidiary of Borrower to comply, in all material respects with all applicable Health Care Laws relating to the operation of such Person's business, except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

(b) Borrower will, and will cause each other Loan Party and each Subsidiary to:

(i) Keep in full force and effect all Authorizations required to operate such Person's business under applicable Health Care Laws and maintain any other qualifications necessary to conduct, arrange for, administer, provide services in connection with or receive payment for all applicable Services, except to the extent such failure to keep in full force and effect or maintain would not reasonably be expected to have a Material Adverse Effect.

(ii) Promptly furnish or cause to be furnished to the Agent, with respect to matters that could reasonably be expected to have a Material Adverse Effect, (w) copies of all material reports of investigational/inspectional observations issued to and received by the Loan Parties or any of their Subsidiaries, and issued by any Governmental Authority relating to such Person's business, (x) copies of all material establishment investigation/inspection reports (including, but not limited to, FDA Form 483's) issued to and received by Loan Parties or any of their Subsidiaries and issued by any Governmental Authority, (y) copies of all material warning and untitled letters as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority relating to or arising out of the conduct applicable to the business of the Loan Parties or any of their Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law or regulation of similar import and (z) notice of any material investigation or material audit or similar proceeding by the FDA, DEA, CMS, or any other Governmental Authority.

(iii) Promptly furnish or cause to be furnished to the Agent, with respect to matters that would reasonably be expected to have a Material Adverse Effect, (in such form as may be reasonably required by Agent) copies of all non-privileged reports, correspondence, pleadings and other communications relating to any matter that could lead to the loss, revocation or suspension (or threatened loss, revocation or suspension) of any material Authorization or of any material qualification of any Loan Party or Subsidiary; *provided* that any internal reports to a Person's compliance "hot line" which are promptly investigated and determined to be without merit need not be reported.

(iv) Promptly furnish or cause to be furnished to the Agent notice of all material fines or penalties imposed by any Governmental Authority under any Health Care Law against any Loan Party or any of its Subsidiaries.

(v) Promptly furnish or cause to be furnished to the Agent notice of all material allegations by any Governmental Authority (or any agent thereof) of fraudulent activities of any Loan Party or any of its Subsidiaries in relation to the provision of clinical research or related services.

Notwithstanding anything to the contrary in any Loan Document, no Loan Party or any of its Subsidiaries shall be required to furnish to Agent or any Lender patient-related or other information, the disclosure of which to Agent or such Lender is prohibited by any applicable law, regulation, or guidance.

6.10 Cure of Violations.

If there shall occur any breach of Section 6.9, Borrower shall take such commercially reasonable action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by applicable Health Care Laws, and shall thereafter diligently pursue the same.

6.11 Corporate Compliance Program.

Maintain, and will cause each other Loan Party to maintain on its behalf, a corporate compliance program with respect to the material operations of the business and shall notify Agent no later than the date required to deliver a Compliance Certificate pursuant to Section 6.1.4 of the implementation of any such new corporate compliance program . Until the Obligations have been Paid in Full, Borrower will modify such corporate compliance program from time to time (and cause the other Loan Parties and their Subsidiaries to modify their respective corporate compliance programs) as may be reasonable to attempt to ensure continuing compliance in all material respects with all material applicable laws, ordinances, rules, regulations and requirements (including, in all applicable material respects, any material Health Care Laws). Subject to the limitations set forth in Section 6.2, Borrower will permit Agent and/or any of its outside consultants to review such corporate compliance programs from time to time upon reasonable notice and during normal business hours of Borrower.

6.12 [Reserved].

Section 7 Negative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, in its sole discretion, it will:

7.1 Debt.

Not, and not permit any Subsidiary to, create, incur, assume or suffer to exist any Debt, except:

(a) Obligations under this Agreement and the other Loan Documents;

(b) Debt with respect to outstanding letters of credit, banker's acceptances or similar instruments posted in the ordinary course of business, provided the outstanding principal amount of such Indebtedness shall not exceed $500,000 in the aggregate at any time;

(c) Debt in respect of obligations relating to corporate credit cards, purchase cards or bank card products, not to exceed $250,000 in the aggregate at any one time outstanding;

(d) Debt of the type described in (and which may be unsecured or secured by Liens permitted by) Section 7.2(b), Section 7.2(d) or Section 7.2(e) and extensions, renewals and re-financings thereof; *provided* that the aggregate amount of all such Debt permitted under Section 7.2(d) at any time outstanding shall not exceed $250,000;

(e) Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(f) Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business, assets or Subsidiary of Borrower otherwise permitted hereunder, (ii) representing deferred compensation to employees of any Loan Party or their Subsidiaries incurred in the ordinary course of business, or (iii) representing customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(g) Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, in each case incurred in the ordinary course of business;

(h) Debt incurred in connection with surety bonds, performance bonds or letters of credit for worker's compensation, unemployment compensation and other types of social security and otherwise in the ordinary course of business or referred to in Section 7.2(e);

(i) Debt described on Schedule 7.1 to the Disclosure Letter as of the Closing Date, and any extension or renewal thereof so long (i) as the principal amount thereof is not increased (other than by an amount equal to unpaid interest and premiums thereon, including tender premium, and any underwriting discounts, fees, commissions and expenses associated with such extension, refinancing, renewal or replacement), (ii) as the terms and conditions of such extension, renewal or refinancing are, taken as a whole, not materially less favorable than the original Debt and (iii) as to such extension or renewal, no additional collateral or other additional form of security is granted by Borrower or any Loan Party in connection therewith;

(j) intercompany Indebtedness permitted under Section 7.10;

(k) Indebtedness constituting obligations in respect of working capital adjustment requirements under the agreements used to consummate the Closing Date Acquisition, a Permitted Acquisition or other Investment permitted under Section 7.10;

(l) Permitted Convertible Bond Indebtedness;

(m) Guarantees of Debt otherwise permitted under this Section 7.1;

(n) Indebtedness owed to any Person in respect of the purchase price for property, casualty, liability, or other insurance to any Loan Party or to any of their Subsidiaries, or to a premium finance company with respect only to such insurance premiums; and

(o) other unsecured Debt (which for further clarity shall exclude accounts payable and other current liabilities incurred by Loan Parties and their Subsidiaries in the ordinary course of business), in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding $250,000.

7.2 Liens.

Not, and not permit any Subsidiary to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement has occurred;

(b) Liens arising in the ordinary course of business (including without limitation (i) Liens of carriers, warehousemen, mechanics, landlords and materialmen and other similar Liens imposed by law and (ii) Liens incurred in connection with worker's compensation, unemployment compensation and other types of social security (excluding Liens arising under ERISA that secure an amount in excess of $250,000) or in connection with surety bonds, bids, tenders, performance bonds, trade contracts not for borrowed money, licenses, statutory obligations and similar obligations) for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement of which is effectively stayed;

(c) Liens described on Schedule 7.2 to the Disclosure Letter as of the Closing Date (other than Liens being released at the closing under this Agreement) and the replacement, extension or renewal of any Lien permitted by this clause (c) upon or in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof other than by an amount equal to unpaid interest and premiums thereon, including tender premium, and any underwriting discounts, fees, commissions and expenses associated with such extension, refinancing, renewal or replacement);

(d) (i) Liens arising in connection with Capital Leases (and attaching only to the property being leased), (ii) Liens on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring or improving such property, including, in the case each of the foregoing clauses (i) and (ii), any such Liens assumed in connection with an Investment permitted pursuant to Section 7.10; *provided* that any such Lien (not assumed in connection with an Investment permitted pursuant to Section 7.10) attaches to such property within one hundred-eighty (180) days of the acquisition or improvement thereof and attaches solely to the property so acquired or improved, and (iii) the replacement, extension or renewal of a Lien permitted by one of the foregoing clauses (i) or (ii) in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof other than by an amount equal to unpaid interest and premiums thereon, and any underwriting discounts, fees, commissions and expenses associated with such extension, refinancing, renewal or replacement);

(e) Liens relating to litigation bonds and attachments, appeal bonds, judgments and other similar Liens arising in connection with any judgment or award that is not an Event of Default hereunder;

(f) easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower or any Subsidiary;

(g) Liens arising under the Loan Documents;

(h) any interest or title of a licensor, sublicensor, lessor or sublessor under any license, lease, sublicense or sublease agreement entered into in the normal course of business, only to the extent limited to the item licensed or leased;

(i) (x) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (y) customary set off rights or similar rights and remedies of deposit banks or securities intermediaries with respect to deposit accounts or securities account maintained at such deposit banks or securities intermediary or which are contained in standard agreements for the opening of an account with a bank or securities intermediary;

(j) Liens arising from precautionary filings of financing statements under the Uniform Commercial Code or similar legislation of any applicable jurisdiction in respect of operating leases permitted hereunder and entered into by a Loan Party or their Subsidiaries in the ordinary course of business;

(k) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder or indemnification other post-closing escrows or holdbacks;

(l) Liens incurred with respect to Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(m) (i) Liens to secure obligations of a Loan Party to another Loan Party and (ii) Liens to secure obligations of a Subsidiary (other than a Loan Party) to another Subsidiary or Loan Party;

(n) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(o) Liens on cash and Cash Equivalents securing Debt permitted under Section 7.1(b), in an aggregate principal amount not to exceed $500,000 outstanding at any one time;

(p) Liens on cash collateral in an aggregate principal amount not to exceed $250,000 outstanding at any one time pledged to secure (i) Debt in respect of corporate credit cards, purchase cards or bank card products permitted pursuant to Section 7.1(c) and (ii) Debt of the type permitted by Section 7.1(g);

(q) Liens of sellers of goods to Borrower and any of its Subsidiaries arising under Article 2 of the Uniform Commercial Code or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(r) Permitted Licenses;

(s) Liens in favor of customs and revenue authorities arising as a matter of law, in the ordinary course of business, to secure payment of customs duties in connection with the importation of goods;

(t) pledges and deposits in the ordinary course of business securing liability to insurance carriers providing property, casualty or liability insurance to Borrower or any Subsidiary (including obligations in respect of letters of credit or bank guarantees for the benefit of such insurance carriers);

(u) any Lien arising under conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business; provided that such Lien attaches only to the goods subject to such sale, title retention, consignment or similar arrangement;

(v) to the extent constituting a Lien, cash escrow arrangements securing indemnification obligations associated with the Closing Date Acquisition, a Permitted Acquisition or any other Investment permitted under Section 7.10;

(w) rights of first refusal, voting, redemption, transfer or other restrictions (including call provisions and buy-sell provisions) with respect to the Equity Interests of any Joint Venture or other Persons that are not Subsidiaries; and

(x) other Liens not securing Debt, in an aggregate amount not to exceed $50,000 outstanding at any one time.

7.3 Dividends; Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof, in each case of the foregoing other than:

(i) (x) each Subsidiary that is a Loan Party may make dividends or distributions to any Loan Party, and (y) each Subsidiary that is not a Loan Party may make dividends or distributions to a Loan Party and to another Subsidiary that is not a Loan Party and pro rata dividends or distributions to minority stockholders of any such Subsidiary;

(ii) Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the Qualified Capital Stock of such Person (including in connection with the conversion of Permitted Convertible Bond Indebtedness or Equity Interests of the Parent);

(iii) (x) Borrower may make cashless repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants of such Equity Interests or upon the exercise of other Equity Interests issued under the Existing Stock Incentive Plans, to represent a portion of the exercise price of such options or warrants or other Equity Interests and (y) Borrower may

acquire (or withhold) its Equity Interests pursuant to any employee stock option or similar plan (including the Existing Stock Incentive Plans) in satisfaction of withholding or similar taxes payable by any present or former officer, employee, director or member of management and Borrower may make deemed repurchases in connection with the exercise of stock options or upon the exercise of other Equity Interests issued under the Existing Stock Incentive Plans;

(iv) Borrower may make payments of cash in lieu of fractional shares of Equity Interests arising out of stock dividends, splits or combinations in connection with exercises or conversions of options, warrants and other convertible securities;

(v) Borrower and each Subsidiary may effect the distribution of rights pursuant to any shareholder rights plan, a rights offering or the redemption of such rights for nominal consideration in accordance with the terms of any shareholder rights plan or a rights offering;

(vi) Borrower and each Subsidiary may make any payment of premium to a counterparty under a Permitted Bond Hedge Transaction in accordance with the definition thereof;

(vii) Borrower and each Subsidiary may make payments to redeem or repurchase the Equity Interests held by any minority shareholder (x) in any Joint Venture or Subsidiary that is not a Wholly-Owned Subsidiary (other than Icon), in each case, to the extent such payment is an Investment permitted under Section 7.10(q)(iii) or (s) and the amount of such payment does not exceed the amount then-available under Section 7.10(q)(iii) and (s) and (y) in Icon after the exercise of stock options issued under the Icon Stock Incentive Plan; and

(viii) Borrower and each Subsidiary may make any payment or delivery in connection with a Permitted Warrant Transaction by (x) delivery of shares of the Borrower's common stock upon net share settlement thereof and any related purchase of such common stock required to be made in connection with such delivery, (y) set-off or payment of an early termination payment or similar payment thereunder, in each case, in the Borrower's common stock upon any early termination thereof or (z) in the event of cash settlement upon settlement, any payment of a cash settlement or equivalent amount.

7.4 Mergers; Consolidations; Asset Sales.

(a) Not be a party to any amalgamation or any other form of merger or consolidation or wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing, unless agreed to by Agent in its sole discretion, nor permit any other Subsidiary to be a party to any amalgamation or any other form of merger or consolidation or wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing, unless agreed to by Agent in its reasonable discretion provided, that, notwithstanding the foregoing provisions of this Section 7.4:

(i) the Borrower may merge or consolidate with any of its Subsidiaries, provided, that, the Borrower shall be the continuing or surviving Person;

(ii) any Loan Party (other than the Borrower) may merge or consolidate with any other Loan Party (other than the Borrower);

(iii) any Subsidiary that is not a Loan Party may be merged or consolidated with or into any Loan Party, provided, that, the continuing or surviving Person shall be such Loan Party or concurrently therewith become a Loan Party;

(iv) any Subsidiary that is not a Loan Party may be merged or consolidated with or into any other Subsidiary that is not a Loan Party;

(v) any Subsidiary may dissolve, liquidate or wind up its affairs at any time, provided, that, such dissolution, liquidation or winding up could not reasonably be expected to have a Material Adverse Effect and all of its assets and business are transferred to a Loan Party or solely in the case of a Subsidiary that is not a Loan Party, another Subsidiary that is not a Loan Party prior to or concurrently with such dissolution, liquidation or winding up; and

(vi) in connection with any Permitted Acquisition the Borrower or any Subsidiary may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it, so long as (x) the Person surviving such merger with any Subsidiary shall be a direct or indirect Wholly Owned Subsidiary (and, if such Subsidiary is a Domestic Subsidiary, a Wholly Owned Domestic Subsidiary), (y) in the case of any such merger to which the Borrower is a party, the Borrower is the surviving Person, and (z) in the case of any such merger to which a Loan Party (other than the Borrower) is a party, the surviving Person is such Loan Party or concurrently therewith becomes a Loan Party.

(b) Not, and not permit any other Subsidiary to make any Disposition (which for the avoidance of doubt shall not include any Permitted Disposition), except for Dispositions for at least fair market value (as determined by the Board of Directors or a Responsible Officer of Borrower) and so long as the net book value of all such Dispositions in any Fiscal Year does not exceed $250,000.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent or any Lender shall not be required in connection with, and no provision in this Agreement or any other Loan Documents shall be interpreted to prohibit, the licensing or sublicensing of Intellectual Property (whether exclusive or non-exclusive) pursuant to collaborations, licenses or other strategic transactions with Third Parties or among Borrower and its Subsidiaries, including Permitted Licenses, in each case that are executed on an arms-length basis (or otherwise on fair and reasonable terms).

7.5 Modification of Organizational Documents.

Not permit the charter, by-laws or other organizational documents of Borrower or any Subsidiary to be amended or modified in any way which could reasonably be expected to materially and adversely affect the interests of Agent or any Lender. An amendment to Borrower's certificate of incorporation to increase Borrower's authorized capital stock shall not be deemed to adversely affect the interests of Agent or any Lender.

7.6 Use of Proceeds.

Use the proceeds of the Loans solely for working capital, for fees and expenses related to the negotiation, execution, delivery and closing of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby and for other general business purposes of Borrower and its Subsidiaries, and not use any proceeds of any Loan or permit any proceeds of any Loan to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying" any Margin Stock or to extend credit to others to purchase or carry Margin Stock.

7.7 Transactions with Affiliates.

Not, and not permit any Subsidiary to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation (including performance, discretionary, retention, relocation, transaction and other special bonuses and payment, severance payments and payments pursuant to employment agreements) and indemnities to, benefits (including retirement, health, stock option and other benefit plans, life insurance, disability insurance and other equity (or equity-linked) awards) for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties or among Subsidiaries that are not Loan Parties, (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7 to the Disclosure Letter, (iv) transactions otherwise permitted pursuant to Sections 7.1, 7.2, 7.3, 7.4 and 7.10 of this Agreement, and (v) transactions including consideration of less than $10,000.

7.8 Inconsistent Agreements.

Not, and not permit any Subsidiary to, enter into any agreement containing any provision which would (a)to the extent constituting a Material Contract, be violated or breached by any borrowing by Borrower hereunder or by the performance by Borrower or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit Borrower or any other Loan Party from granting to Agent and Lenders a Lien on any of its assets or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (i) pay dividends or make other distributions to Borrower or any other Subsidiary, or pay any Debt owed to Borrower or any other Subsidiary, (ii) make loans or advances to Borrower or any other Loan Party or (iii) transfer any of its assets or properties to Borrower or any other Loan Party, other than (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt or the property leased or licensed, (B) customary provisions in leases and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, (D) those arising under any Loan Document, (E) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder, (F) any Permitted Lien or any document or instrument governing any Permitted Lien, provided, that, any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (G) customary provisions regarding confidentiality or restricting assignment, pledges or transfer of any Permitted License or any other agreement entered into in the ordinary course of business, (H) customary provisions in joint venture agreements and other similar agreements applicable to, and agreements evidencing Debt of, Joint Ventures permitted under Section 7.10 and applicable solely to the assets of such Joint Ventures, so long as such provisions and restrictions remain in effect, (I) restrictions or encumbrances in any agreement in effect at the time such Person becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary, and (J) Permitted Convertible Bond Indebtedness.

7.9 Business Activities.

Not, and not permit any Subsidiary to, engage principally in any line of business other than the businesses engaged in on the Closing Date and businesses reasonably related or incidental thereto or which constitutes a reasonable extension or expansion thereof. Not, and not permit any Subsidiary to, issue any Equity Interest other than (a) Equity Interests of Borrower that do not require any cash dividends or other cash distributions to be made prior to the Obligations being Paid in Full or other Qualified Capital Stock of Borrower, (b) any issuance by a Subsidiary to Borrower or another Subsidiary or any minority equity holder that is a Third Party in accordance with Section 7.4 or Section 7.10 or (c) any issuance of directors' qualifying shares as required by applicable law.

7.10 Investments.

Not, and not permit any Subsidiary to, make or permit to exist any Investment in any other Person, except the following:

(a) The creation of any Wholly-Owned Subsidiary and contributions by any Loan Party to the capital of any Wholly-Owned Subsidiary of any Loan Party, so long as the recipient of any such contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its equity interests and substantially all of its real and personal property, in each case in accordance with Section 6.8;

(b) Cash Equivalent Investments;

(c) bank deposits in the ordinary course of business;

(d) Investments listed on Schedule 7.10 to the Disclosure Letter as of the Closing Date, together with any roll-over or reinvestment of such Investment(s);

(e) any purchase or other acquisition by Borrower, Icon or any Wholly-Owned Subsidiary of Borrower of the assets or equity interests of any Subsidiary of Borrower;

(f) transactions among Loan Parties permitted by Section 7.4;

(g) Hedging Obligations permitted under Section 7.1(e);

(h) advances given to employees and directors in existence as of the Closing Date and as listed on Schedule 7.10 to the Disclosure Letter, which amounts shall not be increased without Agent's prior written consent in its sole discretion;

(i) lease, utility and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;

(j) Investments consisting of the non-cash portion of the consideration received in respect of Dispositions or Involuntary Disposition permitted hereunder;

(k) Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation proceeds in accordance with the Loan Documents;

(l) Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof;

(m) (i) the Closing Date Acquisition, (ii) Permitted Acquisitions, (iii) Investments consisting of earnest money deposits in connection with Permitted Acquisitions and (iv) Investments held by a Person acquired or merged into the Borrower or any Subsidiary in connection with a Permitted Acquisition so long as such Investments were not made in contemplation of such Permitted Acquisition and were in existence on the date of such Permitted Acquisition and Permitted Acquisitions;

(n) to the extent constituting Investments, Investments in the form of Permitted Bond Hedge Transactions and Permitted Warrant Transactions, in each case, entered into in connection with Permitted Convertible Bond Indebtedness permitted by Section 7.1(l);

(o) (i) Investments consisting of travel advances and employee relocation loans, and other employee loans and advances to officers, directors and employees in the ordinary course of business, not to exceed $250,000 in the aggregate outstanding at any one time and (ii) Investments consisting of non-cash loans to employees, officers, or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's board of directors;

(p) to the extent constituting Investments, Investments consisting of the endorsement of negotiable instruments for deposit or collection in the ordinary course of business;

(q) (i) Investments in any Loan Party by another Loan Party, (ii) Investments by any Subsidiary that is not a Loan Party in a Loan Party or any other Subsidiary that is not a Loan Party, (iii) Investments by Loan Parties in Subsidiaries that are not Loan Parties, in an aggregate amount not to exceed $100,000 at any one time outstanding and (iv) Investments by Loan Parties in any Subsidiary that is a Massachusetts securities corporation;

(r) (i) Joint Ventures or strategic alliances consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support and (ii) other Joint Ventures; provided that any capital contribution or other Investment in any such Joint Ventures by Borrower and its Subsidiaries in reliance on this Section 7.10(r) shall be limited to (x) the entering into a Permitted License with such Joint Venture and (y) other Investments not exceeding $250,000 in the aggregate in any Fiscal Year; and

(s) other Investments not exceeding $100,000 in the aggregate in any Fiscal Year.

7.11 Restriction of Amendments to Certain Documents.

Not, nor permit any Loan Party to, at any time following the occurrence and continuance of an Event of Default under Sections 8.1.1, 8.1.3 or 8.1.4(a) (solely with respect to a breach under Section 7.13 and which is continuing for more than two (2) Fiscal Quarters), amend or otherwise modify in any material manner, or waive any material rights under, any provisions of any of the Material Contracts (or any replacements thereof) set forth on Schedule 5.21 hereto (as such schedule is updated from time to time pursuant to Section 6.1.2(b)(ii)).

7.12 Fiscal Year.

Not change its Fiscal Year without the prior written consent of Agent.

7.13 Financial Covenants

7.13.1 Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets to be less than, (i) as of the last day of any month ending before February 15, 2019 and the last day of any month ending after the satisfaction of the Subsequent Minimum Capital Raise Condition, $4,000,000, or (ii) at all other times, $24,000,000.

7.13.2 Minimum Aggregate Revenue.

On the last day of any Fiscal Quarter (commencing with the Fiscal Quarter ending March 31, 2019), not permit the Aggregate Revenue for (i) in the case of the Fiscal Quarter ending March 31, 2019, such Fiscal Quarter, (ii) in the case of the Fiscal Quarter ending June 30, 2019, the two (2) Fiscal Quarter period ending on the last day of such Fiscal Quarter, (iii) in the case of the Fiscal Quarter ending September 30, 2019, the three (3) Fiscal Quarter period ending on the last day of such Fiscal Quarter and (iv) in the case of each Fiscal Quarter ending December 31, 2019 or thereafter, the four (4) Fiscal Quarter period ending on the last day of such Fiscal Quarter, to be less than the applicable amount designated in writing by Agent (as approved by Borrower in its reasonable discretion) following the receipt of the projections for each Subject Period delivered by Borrower pursuant to Section 6.1.8 hereof, which amount shall be seventy-five percent (75%) of the projected Aggregate Revenue for such period being measured as set forth in the projections delivered by Borrower for the initial Subject Period and the last four (4) Fiscal Quarters of any Subject Period thereafter pursuant to Section 6.1.8 hereof.

7.13.3 Minimum EBITDA.

On the last day of any Fiscal Quarter (commencing with the Fiscal Quarter ending March 31, 2019), not permit the EBITDA of Borrower and its Subsidiaries for (i) in the case of the Fiscal Quarter ending March 31, 2019, such Fiscal Quarter, (ii) in the case of the Fiscal Quarter ending June 30, 2019, the two (2) Fiscal Quarter period ending on the last day of such Fiscal Quarter, (iii) in the case of the Fiscal Quarter ending September 30, 2019, the three (3) Fiscal Quarter period ending on the last day of such Fiscal Quarter and (iv) in the case of each Fiscal Quarter ending December 31, 2019 or thereafter, the four (4) Fiscal Quarter period ending on the last day of such Fiscal Quarter, to be less than the applicable amount designated in writing by Agent (as approved by Borrower in its reasonable discretion) following the receipt of the projections for each Subject Period delivered by Borrower pursuant to Section 6.1.8 hereof, which amount shall be seventy-five percent (75%) of the projected EBITDA for such period being measured as set forth in the projections delivered by Borrower for the initial Subject Period and the last four (4) Fiscal Quarters of any Subject Period thereafter pursuant to Section 6.1.8 hereof.

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 to the Disclosure Letter (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prompt written notice to Agent thereafter. To the extent such Deposit Account is not an Exempt Account, Borrower or such other applicable Loan Party and the bank or other financial institution at which the account is to be opened after the Closing Date shall promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, as requested by Agent (it being understood that the Loan Parties shall have ninety (90) days after the acquisition or establishment of a Deposit Account (or such longer period as Agent shall agree in its sole discretion) to comply with this Section 7.14 with respect to any such Deposit Account acquired or established after the Closing Date in connection with a Permitted Acquisition or other Investment permitted by Section 7.10 (such period to be measured from the date of acquisition or establishment)).

7.15 [Reserved].

7.16 Regulatory Matters.

To the extent that any of the following would reasonably be expected to result in a Material Adverse Effect, not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake action against such Loan Party, (ii) conduct any clinical studies in the United States or sponsor the conduct of any clinical research in the United States without the appropriate authorizations by the FDA or relevant Governmental Authority, (iii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, or (iv) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17 Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names.

Borrower shall not, nor shall it permit any Loan Party to, (a) change its jurisdiction of organization or change its corporate name without ten (10) calendar days prior written notice to Agent (or such shorter period as the Agent may agree in its sole discretion) (it being agreed that the following corporate name changes to occur immediately following closing are approved: (i) pSivida Corp. will change to EyePoint Pharmaceuticals, Inc., (ii) pSivida US, Inc. will change to EyePoint Pharmaceuticals US, Inc. and (iii) Psivida Securities Corporation will change to EyePoint Pharmaceuticals Securities Corporation), (b) amend, alter, suspend, terminate or make provisional in any material way, any Permit, the suspension, amendment, alteration, termination or provisioning of which could reasonably be expected to be, have or result in a Material Adverse Effect without the prior written consent of Agent, which consent shall not be unreasonably withheld, (c) amend, modify, restate or change any insurance policy in a manner materially adverse to Agent or Lenders, (d) change its federal tax employer identification number or similar tax identification number under the relevant jurisdiction or establish new or additional trade names without providing not less than ten (10) calendar days prior written notice to Agent (or such shorter period as the Agent may agree in its sole discretion), or (e) to the extent provided to any Lender, revoke, alter or amend any Tax Information Authorization (on IRS Form 8821 or otherwise) or other similar authorization mandated by the relevant Government Authority given to such Lender.

7.18 Truth of Statements.

Borrower shall not knowingly furnish to Agent or any Lender any certificate or other document (other than financial projections, estimates and other forward-looking information, and information of a general economic or industry specific nature) that contains, when furnished and taken as whole together with such other certificates and documents so furnished), any untrue statement of a material fact or that omits to state a material fact necessary to make it not materially misleading in light of the circumstances under which it was furnished; provided, that, with respect to financial projections, estimates, budgets or other forward-looking information, Borrower covenants only that such information will be prepared in good faith based upon assumptions believed by Borrower to be reasonable at the time such information is prepared (it being understood that such information is as to future events and is not to be viewed as facts, is subject to significant uncertainties and contingencies, many of which are beyond the control of Borrower and its Subsidiaries, that no assurance can be given that any particular projection, estimate or forecast will be realized and that actual results during the period or periods covered by any such projections, estimate, budgets or forecasts may differ significantly from the projected results and such differences may be material).

7.19 Milestone Payments under Acquisition Agreement.

Notwithstanding anything set forth in the Acquisition Agreement, not and not permit any Subsidiary, to (i) pay all or any portion of the "Development Milestone Payment" (as defined in the Acquisition Agreement) (A) at any time prior to the satisfaction of the Subsequent Minimum Capital Raise Condition or (B) at any time following the occurrence and continuance of a Default or an Event of Default or if a Default or Event of Default would result from any such payment(s) or (ii) pay all or any portion of any other "Milestone Consideration" (as defined in the Acquisition Agreement) at any time following the occurrence and continuance of a Default or an Event of Default or if a Default or Event of Default would result from any such payment(s).

Section 8 Events of Default; Remedies.

8.1 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

8.1.1 Non-Payment of Credit.

(a) Default in the payment when due of all outstanding Obligations on the Termination Date; (b) default, and continuance thereof for five (5) Business Days, in the payment when due of any Revenue-Based Payment; or (c) without duplication of clause (b) hereof, default, and continuance thereof for ten (10) Business Days, in the payment when due of any other interest, fee, or other amount payable by any Loan Party hereunder or under any other Loan Document.

8.1.2 Default Under Other Debt.

(a) Any default shall occur under the terms applicable to any Debt of any Loan Party (excluding the Obligations, Hedging Obligations, Permitted Hedge Transactions and Permitted Warrant Transactions) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding $250,000; or

(b) There occurs under any agreement related to Hedging Obligations, a Permitted Bond Hedge Transaction or a Permitted Warrant Transaction an Early Termination Date (as defined therein) resulting from any event of default thereunder as to which Borrower or any Subsidiary is the Defaulting Party (as defined therein) and the net termination value owed by Borrower or such Subsidiary as a result thereof is greater than $250,000, and such termination value is required to be paid in cash and may not be settled by the delivery of common stock of Borrower.

8.1.3 Bankruptcy; Insolvency.

(a) Any Loan Party shall (i) be unable to pay its debts generally as they become due, (ii) file a petition under any insolvency statute, (iii) make a general assignment for the benefit of its creditors, (iv) commence a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or except as permitted by Section 7.4(a), shall otherwise be dissolved or liquidated, or (v) make an application or commence a proceeding seeking reorganization or liquidation or similar relief under any Debtor Relief Law or any other applicable law; or

(b) (i) a court of competent jurisdiction shall (A) enter an order, judgment or decree appointing a custodian, receiver, trustee, liquidator or conservator of any Loan Party or the whole or any substantial part of any of Loan Party's properties, which shall continue unstayed and in effect for a period of sixty (60) calendar days, (B) approve a petition or claim filed against any Loan Party seeking reorganization, liquidation, appointment of a receiver, interim receiver, liquidator, conservator, trustee or special manager or similar relief under the any Debtor Relief Law or any other applicable law, which is not dismissed within sixty (60) calendar days or, (C) under the provisions of any Debtor Relief Law or other applicable law or statute, assume custody or control of any Loan Party or of the whole or any substantial part of any of Loan Party's properties, which is not irrevocably relinquished within sixty (60) calendar days, or (ii) there is commenced against any Loan Party any proceeding or petition seeking reorganization, liquidation or similar relief under any Debtor Relief Law or any other applicable law or statute, which (A) is not unconditionally dismissed within sixty (60) calendar days after the date of commencement, or (B) is with respect to which Borrower takes any action to indicate its approval of or consent.

8.1.4 Non-Compliance with Loan Documents.

(a) Any failure by Borrower to comply with or to perform any covenant set forth in Section 7; or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (b) for thirty (30) days after the earlier of any Responsible Officer of a Loan Party becoming aware of such failure or notice thereof to Borrower from Agent or any Lender.

8.1.5 Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6 Pension Plans.

(a) Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $250,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of $250,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $250,000.

8.1.7 Judgments.

Final judgments which exceed an aggregate of $250,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty (30) calendar days after entry or filing of such judgments.

8.1.8 Invalidity of Loan Documents or Liens.

(a) Any Loan Document shall cease to be in full force and effect otherwise in accordance with its express terms that results in a material diminution of the rights and remedies afforded to Agent and/or Lenders or any other secured parties thereunder; (b) any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in any manner the validity, binding nature or enforceability of any Loan Document or the Closing Date Warrant or shall otherwise fail to honor its obligations under the Closing Date Warrant; or (c) other than as a result of any act or omission by the Agent, any Lien created pursuant to any Loan Document ceases to constitute a valid first priority perfected Lien (subject to Permitted Liens) on any material portion of the Collateral in accordance with the terms thereof, or Agent ceases to have a valid perfected first priority security interest (subject to Permitted Liens) in any material portion of the Collateral pledged to Agent, for the benefit of Lenders, pursuant to the Collateral Documents.

8.1.9 Invalidity of Subordination Provisions.

Any subordination provision in any document or instrument governing any subordinated debt of a Loan Party or any subordination provision in any intercreditor agreement in respect of such subordinated debt, shall cease to be in full force and effect, or any Loan Party shall contest in any manner the validity, binding nature or enforceability of any such provision.

8.1.10 Change of Control.

A Change of Control shall occur.

8.1.11 Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters.

(a) The institution of any proceeding by FDA, CMS, or any other Governmental Authority to order the withdrawal of any Product or Product category or Service or Service category from the market or to enjoin Borrower or any of its Subsidiaries from manufacturing, marketing, selling, distributing, or otherwise providing any Product or Product category or Service or Service category that, in each case, could reasonably be expected to have a Material Adverse Effect, (b) the institution of any action or proceeding by DEA, FDA, CMS, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Required Permit held by Borrower or any of its Subsidiaries or any of their representatives, which, in each case, could reasonably be expected to have a Material Adverse Effect, (c) the commencement of any enforcement action against Borrower or any of its Subsidiaries by DEA, FDA, CMS, or any other Governmental Authority that could reasonably be expected to have a Material Adverse Effect, (d) the recall of any Products or Service from the market, the voluntary withdrawal of any Products or Service from the market, or actions to discontinue the sale of any Products or Service that, in each case, could reasonably be expected to have a Material Adverse Effect, (e) the occurrence of adverse test, audit, or inspection results in connection with a Product or Service which could reasonably be expected to have a Material Adverse Effect, or (f) the occurrence of any event described in clauses (a) through (e) above that would otherwise cause Borrower to be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

8.1.12 Material Adverse Effect.

(a) Any Material Adverse Effect shall occur that is not otherwise provided for in this Section 8.1.

8.2 Remedies.

(a) If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Agent may, and upon the written request of Required Lenders shall, declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Loans and other Obligations (including without limitation the Exit Fee and prepayment fee payable with respect thereto) shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Agent shall use commercially reasonable efforts to promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b) In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of an Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Lenders, or Required Lenders at any place reasonably designated by Required Lenders in their sole discretion and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon. Agent and Lenders agree that in connection with any foreclosure or other exercise of rights under this Agreement or any other Loan Document with respect to the Intellectual Property, the rights of the licensees under any Permitted License will not be terminated, limited or otherwise adversely affected so long as no default exists under such Permitted License in a way that would permit the licensor to terminate such Permitted License (commonly termed a non-disturbance).

(c) The enumeration of any rights and remedies in any Loan Document is not intended to be exhaustive, and all rights and remedies of Agent and Lenders described in any Loan Document are cumulative and are not alternative to or exclusive of any other rights or remedies which Agent and Lenders otherwise may have. The partial or complete exercise of any right or remedy shall not preclude any other further exercise of such or any other right or remedy.

(d) Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice, to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set

forth in clauses (i) and (ii) herein, a "Protective Advance"). Agent shall be reimbursed for all Protective Advances pursuant to Section 2.9.1(b) and/or Section 2.10, as applicable, and any Protective Advances shall bear interest at the Default Rate from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1 Appointment; Authorization.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

9.2 Delegation of Duties.

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.3 Limited Liability.

None of Agent or any of its directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance.

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document believed by it to be genuine and correct and to have been signed, sent or

made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or all Lenders if expressly required hereunder) as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Required Lenders (or all Lenders if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender.

9.5 Notice of Default.

Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a "notice of default". Agent will notify Lenders of its receipt of any such notice or any such default in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders. Agent shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2; *provided* that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of Lenders.

9.6 Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

9.7 Indemnification.

Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify upon demand Agent and its directors, officers, employees and agents (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), based on such Lender's Pro Rata Term Loan Share, from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs, except to the extent any thereof result

from the applicable Person's own gross negligence or willful misconduct, as determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Legal Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 9.7 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of Agent.

9.8 Agent Individually.

SWK and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party as though SWK were not Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, SWK or its Affiliates may receive information regarding Loan Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), SWK and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though SWK were not Agent, and the terms "Lender" and "Lenders" include SWK and its Affiliates, to the extent applicable, in their individual capacities.

9.9 Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior written notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of Default exists) Borrower, a successor agent from among Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Required Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

9.10 Collateral and Guarantee Matters.

Lenders irrevocably authorize Agent, at its option and in its discretion, (a) to release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by Required Lenders; (b) notwithstanding Section 10.1(a)(ii) hereof to release any party from its guaranty under the Guarantee and Collateral Agreement (i) when all Obligations have been Paid in Full or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) to release or subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by Section 7.2(d) (it being understood that Agent may conclusively rely on a certificate from Borrower in determining whether the Debt secured by any such Lien is permitted by Section 7.1). Upon request by Agent at any time, Lenders will confirm in writing Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 9.10.

Agent shall (a) release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full, (ii) in respect of property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement) or (iii) subject to Section 10.1, if directed to do so in writing by Required Lenders; (b) notwithstanding Section 10.1(a)(ii) hereof release any party from its guaranty under the Guarantee and Collateral Agreement (i) when all Obligations have been Paid in Full or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) release or subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by Section 7.2(d) (it being understood that Agent may conclusively rely on a certificate from Borrower in determining whether the Debt secured by any such Lien is permitted by Section 7.1).

In furtherance of the foregoing, Agent agrees to execute and deliver to Borrower, at Borrower's expense, such subordination, termination and release documentation as Borrower may reasonably request to evidence a Lien subordination or release that occurs pursuant to terms of this Section 9.10 and deliver to Borrower, at the expense of Borrower, any portion of such Collateral so released pursuant to this Section 9.10 that is in possession of Agent.

9.11 Intercreditor Agreements.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to enter into one or more intercreditor agreements in relation to any other Debt of Borrower entered into in accordance with this Agreement or as otherwise approved by Required Lenders, on its behalf and to take such action on its behalf under the provisions of any such agreement (subject to the last sentence of this Section 9.11). Each Lender further agrees to be bound by the terms and conditions of any such intercreditor agreement. Each Lender hereby authorizes Agent to issue blockages notices in connection with any such Debt of Borrower and such intercreditor agreement, or any replacement intercreditor agreement, at the direction of Required Lenders.

9.12 Actions in Concert.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Agent and Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

Section 10 Miscellaneous.

10.1 Waiver; Amendments.

(a) Except as otherwise expressly provided in this Agreement, no amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Borrower (with respect to Loan Documents to which Borrower is a party), by Lenders having aggregate Pro Rata Term Loan Shares of not less than the aggregate Pro Rata Term Loan Shares expressly designated herein with respect thereto or, in the absence of such express designation herein, by Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided*, *however*, that:

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Required Lenders and Borrower, do any of the following: (A) increase any of the Commitments (*provided* that only the Lenders participating in any such increase of the Commitments shall be considered directly affected by such increase and it being understood and agreed that a waiver of any condition precedent set forth in this Agreement to making the additional advance pursuant to Section 2.2.2 or of any Default is not considered an extension or increase in the Commitments of any Lender), (B) extend the date scheduled for payment of any principal of (except as otherwise expressly set forth below in clause (C)) or interest on the Loans or any fees or other amounts payable hereunder or under the other Loan Documents (excluding mandatory prepayments), or (C) reduce the principal amount of any Loan, the amount or rate of interest thereon (*provided* that Required Lenders may rescind an imposition of default interest pursuant to Section 2.6.1), or any fees or other amounts payable hereunder or under the other Loan Documents; and

(ii) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to Borrower (with respect to Loan Documents to which Borrower is a party), do any of the following: (A) release any material guaranty under the Guarantee and Collateral Agreement or release all or substantially all of the Collateral granted under the Collateral Documents, except as otherwise specifically provided in this Agreement or the other Loan Documents, (B) change the definition of Required Lenders, (C) change any provision of this Section 10.1, (D) amend the provisions of Section 2.10.2, or (E) reduce the aggregate Pro Rata Term Loan Shares required to effect any amendment, modification, waiver or consent under the Loan Documents.

(b) No amendment, modification, waiver or consent shall, unless in writing and signed by Agent, in addition to Borrower and Required Lenders (or all Lenders directly affected thereby or all of the Lenders, as the case may be, in accordance with the provisions above), affect the rights, privileges, duties or obligations of Agent (including without limitation under the provisions of Section 9), under this Agreement or any other Loan Document.

(c) No delay on the part of Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

(d) Notwithstanding anything to the contrary herein, the Agent and the Loan Parties may amend or modify this Agreement and any other Loan Document to (1) cure any factual or typographical error, omission, defect or inconsistency therein, or (2) grant a new Lien for the benefit of the Lenders, extend an additional Lien over additional property for the benefit of the Lenders or join additional Persons as Loan Parties.

10.2 Notices.

All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at its address shown on Annex II or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by registered or certified mail, first class postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. Borrower, Agent and Lenders each hereby acknowledge that, from time to time, Agent, Lenders and Borrower may deliver information and notices using electronic mail.

10.3 Computations.

Unless otherwise specifically provided herein, any accounting term used in this Agreement (including in Section 7.13 or any related definition) shall have the meaning customarily given such term in accordance with GAAP, and all financial computations (including pursuant to Section 7.13 and the related definitions, and with respect to the character or amount of any asset or liability or item of income or expense, or any consolidation or other accounting computation) hereunder shall be computed in accordance with GAAP consistently applied; *provided* that if Borrower notifies Agent that Borrower wishes to amend any covenant in Section 7.13 (or any related definition) to eliminate or to take into account the effect of any change in GAAP on the operation of such covenant (or if Agent notifies Borrower that Required Lenders wish to amend Section 7.13 (or any related definition) for such purpose), then Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant (or related definition) is amended in a manner satisfactory to Borrower and Required Lenders. The explicit qualification of terms or computations by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the audited financial statements referenced in Section 5.4(a) for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto or the application thereof, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Debt or other liabilities of any Loan Party or any Subsidiary at "fair value", as defined therein.

10.4 Costs; Expenses.

Borrower agrees to pay within five (5) Business Days of demand the reasonable and documented, out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

10.5 Indemnification by Borrower.

(i) In consideration of the execution and delivery of this Agreement by Agent and Lenders and the agreement to extend the Commitments provided hereunder, Borrower hereby agrees to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and reasonable and documented out-of-pocket expenses, including Legal Costs (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any Loan Party or any of their respective officers, directors or agents, including, without limitation, (a) any tender offer, merger, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Substance at any property owned or leased by Borrower or any other Loan Party, (c) any violation of any Environmental Laws with respect to conditions at any property owned or leased by any Loan Party or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Loan Party or their respective predecessors are alleged to have directly or indirectly disposed of Hazardous Substances, (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except to the extent any such Indemnified Liabilities result solely from the applicable Lender Party's own bad faith, gross negligence or willful misconduct as finally determined by a court of competent jurisdiction in a non-appealable judgment, or (f) such Person's general operation of its business including all product liability out of or in connection with such Person's or any of its Affiliates or licensees manufacture, use or sale of a Product or the provision of a Service; provided, that, such indemnity shall not, as to any Lender Party, be available to the extent that such Indemnified Liabilities (i) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from a claim brought by any Loan Party against a Lender Party for material breach of such Lender Party's obligations hereunder or under any other Loan Document, or (ii) arise solely from a dispute among the Lender Parties (except when and to the extent that one of the Lender Parties party to such dispute was acting in its capacity or in fulfilling its role as Agent, or any similar role under this Agreement or any other Loan Document) that does not involve any act or omission of the Loan Parties or any of their respective Affiliates. This Section 10.5 shall not apply with respect to (x) Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements arising from any third party claim or any other non-Tax claim

and (y) yield protection matters covered by Sections 3.2 and 3.3, which shall be governed exclusively by Sections 3.2 and 3.3. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All Obligations provided for in this Section 10.5 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

(ii) Notwithstanding the foregoing in this Section 10.5, the Loan Parties shall not be liable for any settlement of any proceeding effected without the Loan Parties' consent (which consent shall not be unreasonably withheld, delayed or conditioned), but if settled with the Loan Parties' written consent, or if there is a judgment against an Lender Party in any such proceeding, the Loan Parties shall indemnify and hold harmless each Lender Party to the extent and in the manner set forth above. The Loan Parties shall not, without the prior written consent of a Lender Party (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding against such Lender Party in respect of which indemnity could have been sought hereunder by such Lender Party unless (a) such settlement includes an unconditional release of such Lender Party from all liability or claims that are the subject matter of, or arise out of, such proceeding and (b) such settlement does not include any statement as to, or any admission of fault, culpability, wrongdoing or a failure to act by or on behalf of such Lender Party.

10.6 Marshaling; Payments Set Aside.

Neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Agent or any Lender, or Agent or any Lender enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or any Lender in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the fullest extent permitted by applicable law, to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred and (b) each Lender severally agrees to pay to Agent upon demand its ratable share of the total amount so recovered from or repaid by Agent to the extent paid to such Lender.

10.7 Nonliability of Lenders.

The relationship between Borrower on the one hand and Lenders and Agent on the other hand shall be solely that of borrower and lender. Neither Agent nor any Lender shall have any fiduciary responsibility to Borrower. Neither Agent nor any Lender undertakes any responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of Borrower's business or operations. To the fullest extent permitted under applicable law, execution of this Agreement by Borrower constitutes a full, complete and irrevocable release of any and all claims which Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any liability with respect to, and Borrower hereby, to the fullest extent permitted under applicable law, waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities.

10.8 Assignments.

10.8.1 Assignments.

(a) Any Lender may at any time assign to one or more Persons (other than a Loan Party or any of their respective Affiliates) (any such Person, an "Assignee") all or any portion of such Lender's Loans and Commitments, with the prior written consent of Agent, and, so long as no Event of Default has occurred and is continuing, Borrower (which consents shall not be unreasonably withheld or delayed except in the case of any proposed assignment to a Competitor, in which case such consent shall be in Borrower's sole discretion), provided, however, that no such consent(s) shall be required:

(i) from Borrower for an assignment by a Lender to another Lender or an Affiliate of a Lender or an Approved Fund of a Lender, but such Lender will give written notice to Borrower of any such assignment;

(ii) from Agent for an assignment by a Lender to an Affiliate of a Lender or an Approved Fund of a Lender;

(iii) from Borrower or Agent for an assignment by SWK Funding LLC, as a Lender, to any Person for which SWK Advisors LLC acts as an investment advisor (or any similar type of representation or agency) pursuant to a written agreement, but SWK Funding LLC will give written notice to Borrower of any such assignment;

(iv) from Borrower or Agent for an assignment by a Lender of its Loans and its Note as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder); or

(v) from Borrower, Agent or any Lender for (A) the assignment of SWK's Loans and Commitments to a Permitted Assignee (as defined below) or (B) a collateral assignment by SWK of, and the grant by SWK of a security interest in, all of SWK's right, title and interest in, to and under each of the Loan Documents, including, without limitation, all of SWK's rights and interests in, to and under this Agreement, the Obligations and the Collateral (collectively, the "Assigned Rights"), to a Permitted Assignee, provided that no such collateral assignment shall release SWK from any of its obligations under any of the Loan Documents. In connection with any enforcement of or foreclosure upon its security interests in any of the Assigned Rights, a Permitted Assignee, upon notice to Borrower, SWK and the other Lenders, shall be entitled to substitute itself, or its designee, for SWK as a Lender under this Agreement. For purposes hereof, the term "Permitted Assignee" shall mean any lender to or funding source of SWK or its Affiliate, together with its successors, assigns or designees (including, without limitation, any purchaser or other assignee of the Assigned Rights from such Person). Effective immediately upon the replacement of SWK as a Lender under this Agreement by a Permitted Assignee in accordance with this clause (v), SWK shall automatically be deemed to have resigned as Agent pursuant to Section 9.9 of this Agreement (without the need for Agent giving advance written notice of such resignation as required pursuant to such Section 9.9), and Required Lenders shall appoint a successor Agent in accordance with Section 9.9 of this Agreement.

(b) From and after the date on which the conditions described above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (ii) the assigning

Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrower shall execute and deliver to Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee's Pro Rata Term Loan Share (and, as applicable, a Note in the principal amount of the Pro Rata Term Loan Share retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower any prior Note held by it.

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the Commitments of, and principal amount of the Loans owing to, such Lender pursuant to the terms hereof. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(d) Notwithstanding the foregoing provisions of this Section 10.8.1 or any other provision of this Agreement, any Lender may at any time assign all or any portion of its Loans and its Note as collateral security (i) to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder) and (ii) to (*w*) an Affiliate of such Lender which is at least fifty percent (50%) owned (directly or indirectly) by such Lender or by its direct or indirect parent company, (*x*) its direct or indirect parent company, (*y*) to one or more other Lenders or (*z*) to an Approved Fund or any finance company, insurance company or other financial institution which temporarily warehouses loans for any Lender or any other Approved Fund.

10.9 Participations.

Any Lender may at any time sell to one or more Persons (other than a Competitor) participating interests in its Loans, Commitments or other interests hereunder (any such Person, a "Participant"). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided* that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements,

and to be subject to the provisions of Section 3.4 and *provided*, *further*, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, and interest, principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

10.10 Confidentiality.

Agent and each Lender agree to maintain as confidential all information (including, without limitation, any information provided by Borrower pursuant to Sections 6.1, 6.2 and 6.9) provided to them by any other party hereto and/or any other Loan Party, as applicable, and to not disclose any such information to any other Person, except that Agent and each Lender may disclose such information (a) to Persons employed or engaged by Agent or such Lender or any of their Affiliates (including collateral managers of Lenders) in evaluating, approving, structuring or administering the Loans and the Commitments (*provided* that such Persons have been informed of the covenants contained in this Section 10.10); (b) to any assignee or participant or potential assignee or participant that has agreed in writing to comply with the covenants contained in this Section 10.10 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that becomes publicly available through no fault of Agent or any Lender and other than as a result of a breach of this Section 10.10; (h) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding Borrower and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization and who agrees to treat such information as confidential; or (i) to a Person that is a trustee, collateral manager, servicer, noteholder or secured party in a Securitization in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For purposes of this Section, "Securitization" means a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information, promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such disclosure *provided*, *however*, that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower. Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.11 Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.12 Nature of Remedies.

All Obligations of Borrower and rights of Agent and Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.13 Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile machine or in ".pdf" format through electronic mail of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page. This Agreement and the other Loan Documents to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including ".pdf"), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such other Loan Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

10.14 Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.15 Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

10.16 Successors; Assigns.

This Agreement shall be binding upon Borrower, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Borrower, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent and each Lender.

10.17 Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

10.18 Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.19 Waiver of Jury Trial.

EACH OF BORROWER, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.20 Patriot Act.

Each Lender that is subject to the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), and Agent (for itself and not on behalf of any Lender), hereby notifies each Loan Party that, pursuant to the requirements of the Patriot Act, such Lender and Agent are required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act.

10.21 Independent Nature of Relationship.

Nothing herein contained shall constitute the Borrower and SWK as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 10.21 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. Neither the Borrower nor SWK has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Borrower and SWK agree that SWK is not involved in or responsible for the manufacture, marketing or sale of any Product or the provision of any Service.

10.22 SWK Status. SWK hereby represents that it is an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933, as amended.

[Remainder of page intentionally blank; signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

BORROWER:

PSIVIDA CORP.,
a Delaware corporation

By: /s/ Nancy Lurker
Name: Nancy Lurker
Title: President and Chief Executive Officer

AGENT AND LENDERS:

SWK FUNDING LLC,
as Agent and a Lender

By: SWK Holdings Corporation,
its sole Manager

By: /s/ Winston Black
Name: Winston Black
Title: Chief Executive Officer

ANNEX I

Commitments and Pro Rata Term Loan Shares

Lender	Commitment	Pro Rata Term Loan Share
SWK Funding LLC	$20,000,000	100%

ANNEX II

Addresses

Party	Notice Address
Agent:	SWK Funding LLC 14755 Preston Road, Suite 105 Dallas, Texas 75254 Email: notifications@swkhold.com with a copy to: Holland & Knight LLP 200 Crescent Court, Suite 1600 Dallas, Texas 75201 Attn: Ryan Magee Email: ryan.magee@hklaw.com
Borrower:	PSIVIDA CORP. 480 Pleasant Street Suite B300 Watertown, MA 02472 Attn: Nancy Lurker Email: nlurker@psivida.com

Party	Notice Address
	Website: psivida.com with a copy to: Hogan Lovells US LLP Columbia Square 555 Thirteenth Street, NW Washington, DC 20004 Attn: Edward Purdon Email: edward.purdon@hoganlovells.com

EXHIBIT A

Form of Assignment Agreement

This ASSIGNMENT AGREEMENT (the "Assignment Agreement") is entered into as of [_____], 20[____], by and between the Assignor named on the signature page hereto ("Assignor") and the Assignee named on the signature page hereto ("Assignee"). Reference is made to the Credit Agreement dated as of March 28, 2018 (as amended, restated, supplemented, or otherwise modified from time to time, the "Credit Agreement") among PSIVIDA CORP., a Delaware corporation ("Borrower"), the Lenders party thereto from time to time ("Lenders"), and SWK FUNDING LLC, as administrative agent (in such capacity, together with its successors and assigns, the "Agent") on behalf of the Lenders. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Credit Agreement.

Assignor and Assignee agree as follows:

1. For an agreed consideration, Assignor hereby irrevocably sells and assigns to Assignee, and the Assignee hereby irrevocably purchases and assumes from Assignor, subject to and in accordance with the Credit Agreement, as of the Effective Date (as defined below) (a) all of Assignors' rights and obligations in its capacities as Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest, as identified on the schedule attached hereto, of all of such outstanding rights and obligations of Assignor under or in relation to the Credit Agreement, and (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of Assignor (in its capacity as Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned by Assignor to the Assignee pursuant to clauses (a) and (b) above being referred to herein collectively as an "Assigned Interest"). Such sale and assignment is without recourse to Assignor and, except as expressly provided in this Assignment Agreement, without representation or warranty by Assignor.

2. Assignor (a) represents that as of the Effective Date, that it is the legal and beneficial owner of the Assigned Interests free and clear of any adverse claim; (b) represents that, as of the date hereof, the balance of the Loan is $[_____]; (c) makes no other representation or warranty and assumes no responsibility with respect to any statement, warranties or representations made in or in connection with the Credit Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Loan Documents or any other instrument or document furnished pursuant thereto; and (d) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any other Person or the performance or observance by any Loan Party of its Obligations under the Credit Agreement or the other Loan Documents or any other instrument or document furnished pursuant thereto.

3. Assignee (a) represents and warrants that it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment Agreement and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement; (b) confirms that it has received a copy of the Credit Agreement and the other Loan Documents, together with copies of the most recent financial statements delivered pursuant thereto and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment Agreement; (c) represents and warrants that it has, independently and without reliance upon Agent or

Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment Agreement and to purchase such Assigned Interest; (d) agrees that it will, independently and without reliance upon Agent, Assignor or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (e) appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to Agent by the terms thereof, together with such powers as are reasonably incidental thereto; (f) hereby represents and warrants that upon the effectiveness of this Assignment Agreement, Assignee will be a Lender under the Credit Agreement and further agrees that it will perform in accordance with their terms all obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender; (g) represents that on the date of this Assignment Agreement it is not presently aware of any facts that would cause it to make a claim under the Credit Agreement; (h) if organized under the laws of a jurisdiction outside the United States, attaches the forms prescribed by the Internal Revenue Service of the United States, which have been duly executed, certifying as to Assignee's exemption from United States withholding taxes with respect to all payments to be made to Assignee under the Credit Agreement or such other documents as are necessary to indicate that all such payments are subject to such tax at a rate reduced by an applicable tax treaty; (i) it meets the requirements to be an assignee under Section 10.8(a) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.8(a) of the Credit Agreement), and (j) represents and warrants that it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type.

4. The effective date for this Assignment Agreement shall be as set forth on the schedule attached hereto (the "Effective Date"). Following the execution of this Assignment Agreement, it will be delivered to Agent for acceptance and recording by Agent pursuant to the Credit Agreement.

5. Upon such acceptance and recording, from and after the Effective Date, (a) Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment Agreement, have the rights and obligations of a Lender thereunder and (b) Assignor shall, to the extent provided in this Assignment Agreement, relinquish its rights (other than indemnification rights) and be released from its obligations under the Credit Agreement.

6. From and after the Effective Date, Agent shall make all payments in respect of each Assigned Interest (including payments of principal, interest, fees and other amounts) to Assignor for amounts which have accrued to but excluding the Effective Date and to Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to Assignee.

7. THIS ASSIGNMENT AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

8. This Assignment Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Assignment Agreement. Receipt by facsimile, portable document format (.pdf), or other electronic transmission of any executed signature page to this Assignment Agreement shall constitute effective delivery of such signature page.

[*Remainder of page intentionally blank; signature page follows.*]

The parties hereto have caused this Assignment Agreement to be executed and delivered as of the date first written above.

ASSIGNOR:
[_____]

By: _____
Name: _____
Title: _____

ASSIGNEE:
[_____]

By: _____
Name: _____
Title: _____

Acknowledged and Agreed:

SWK FUNDING LLC,
as Agent

By: SWK Holdings Corporation,

its sole Manager

By: _____
Name: _____
Title: _____

Schedule to Assignment Agreement

Assignor: _____
Assignee: _____
Effective Date: _____

Credit Agreement: Credit Agreement, dated as of March 28, 2018, among PSIVIDA CORP., a Delaware corporation, as Borrower, the financial institutions party thereto from time to time as Lenders, and SWK FUNDING LLC, as Agent, as it may be amended, restated, supplemented or otherwise modified from time to time

Interests Assigned:

	Term Loan	Aggregate Pro Rata Term Loan Share
Assignor Amounts (pre-assignment)	$20,000,000	100%
Assignor Amounts (post-assignment)	$	
Amounts Assigned	$	
Assignee Amounts (pre-assignment)	$ 0	0%
Assignee Amounts (post-assignment)	$	

Assignee Information:

Address for Notices:

_____

_____

Attention: _____
Telephone: _____
Telecopy: _____

Address for Payments:

Bank: _____

_____

ABA #: _____
Account #: _____
Reference: _____

EXHIBIT B

Form of Compliance Certificate

COMPLIANCE CERTIFICATE

[_____], 20[__]

Please refer to the Credit Agreement, dated as of March 28, 2018 (as amended, restated or otherwise modified from time to time, the "Credit Agreement") among PSIVIDA CORP., a Delaware corporation ("Borrower"), the lenders party thereto from time to time as Lenders, and SWK FUNDING LLC, as administrative agent (in such capacity, together with its successors and assigns, the "Agent") on behalf of the Lenders. This certificate (this "Certificate"), together with supporting calculations attached hereto, is delivered to Agent pursuant to the terms of the Credit Agreement. Terms used but not otherwise defined herein are used herein as defined in the Credit Agreement.

Enclosed herewith is a copy of the **[annual audited/quarterly unaudited]** financial statements required under the Credit Agreement as at and for the period ending **[_____]** (the "Computation Date"), which financial statements fairly present in all material respects the financial condition and results of operations of the Persons covered by such financial statements as of the Computation Date and for the period then ended and have been prepared in accordance with GAAP consistently applied (subject to the absence of footnotes and to normal year-end adjustments).

Borrower hereby certifies and warrants that the computations set forth on the schedule attached hereto correspond to the computations required by Sections 7.13.1, 7.13.2, and 7.13.3 of the Credit Agreement and such computations are true and correct as of the Computation Date.

Borrower further certifies that no Event of Default or Default has occurred and is continuing **[except as set forth on Annex I hereto, which Annex describes such Event of Default or Default and the steps, if any, being taken to cure it]**.

[[**Include with any quarterly reports, if applicable**] [Attached hereto are copies of each material written demand, notice or document received by Borrower that questions or calls into doubt the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Receivables for all Loan Parties]]

[[**Include with any annual reports**] [Attached hereto are updated Schedules 5.16, 5.18(a)(i), 5.18(b)(i) and 5.21 to the Disclosure Letter setting forth any changes to the disclosures set forth in such schedules as most recently provided to Agent.][There have been no changes to Schedules 5.16, 5.18(a)(i), 5.18(b)(i) and 5.21 to the Disclosure Letter as most recently provided to Agent.][Attached hereto are updated versions of the Schedules to the Guarantee and Collateral Agreement showing information as of the date of such audit report.][There have been no changes to the Schedules to the Guarantee and Collateral Agreement as most recently provided to Agent.]]

Borrower has caused this Certificate to be executed and delivered by its officer thereunto duly authorized on [_____], 20[__].

PSIVIDA CORP.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Schedule to Compliance Certificate
Dated as of _____[1]

A. Section 7.13.1 – Consolidated Unencumbered Liquid Assets

1A. any Cash Equivalent Investment owned by Borrower and the other Loan Parties on a consolidated basis (I) which are not the subject of any Lien (other than (w) the Lien for the benefit of Agent and Lenders, (x) bankers' liens, (y) rights of setoff or (z) any non-consensual Lien permitted under Section 7.2) or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Borrower and such Loan Parties and (II) which are held in one or more accounts other than Exempt Accounts:

(a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof $_____

(b) commercial paper, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least "A-l" by Standard & Poor's Ratings Group or "P-l" by Moody's Investors Service, Inc. $_____

(c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by any Lender (or by a commercial banking institution that is a member of the Federal Reserve System or is a U.S. branch of a foreign banking institution and has a combined capital and surplus and undivided profits of not less than $500,000,000) $_____

(d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in Item (c) above) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of Items (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than one-hundred percent (100%) of the repurchase obligation of such Lender (or other commercial banking institution) thereunder $_____

[1] The descriptions of the calculations set forth in this certificate are sometimes abbreviated for simplicity, but are qualified in their entirety by reference to the full text of the calculations provided in the Credit Agreement.

(e)	money market accounts or mutual funds which invest exclusively or substantially in assets satisfying the foregoing requirements	$_____
(f)	cash	$_____
(g)	other short term liquid investments approved in writing by Agent (such approval not to be unreasonably withheld or delayed)	$_____
(h)	instruments equivalent to those referred to in Items 1(A)(a) through (g) above denominated in euro or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by the Loan Parties or any of their Subsidiaries organized in such jurisdiction	$_____
1B.	The aggregate amount of Borrower's accounts payable under GAAP that are ninety (90) days or more past due for such accounts payable (other than any accounts payable being contested in good faith)	$_____
1C.	Total of Items 1(A)(a) through (h) above, minus Item 1(B) above	$_____
2.	Minimum Required	
2A.	As of the last day of any month ending before February 15, 2019, and the last day of any month ending after the satisfaction of the Subsequent Minimum Capital Raise Condition, is the amount in Item 1C equal to or greater than $4,000,000?	__ Yes __ No
2B.	As of all times other than the times described in Item 2A, is the amount in Item 1C equal to or greater than $24,000,000?	__ Yes __ No

B.	**Section 7.13.2 – Minimum Aggregate Revenue[2]**	
	For the applicable period ending on the Computation Date:	
	1. The aggregate amount of revenue recognized under GAAP (including, for the avoidance of doubt, for any period, the applicable portion of any one-time upfront cash payment with respect to any such revenues for which GAAP required the recognition of revenue from such cash payment to be deferred over time), consistently applied, less all rebates, discounts and other price allowances. "Aggregate Revenue" shall be determined in a manner consistent with the methodologies, practices and procedures used in developing Borrower's audited financial statements.	$_____
	2. Minimum Required for corresponding period	(*See* table to be provided by Agent)[3]
	Is the amount in Item 1 equal to or greater than the amount referenced in Item 2?	__ Yes __ No
C.	**Section 7.13.3 – Minimum EBITDA[4]**	
	For the applicable period ending on the Computation Date:	
	1. Consolidated Net Income (or loss) of Borrower and its Subsidiaries as determined under GAAP for ____ consecutive month period ending on the Computation Date	$_____
	In each case, to the extent deducted in determining Item 1 and without duplication of the foregoing items, and in each case for Borrower and its Subsidiaries for the ____ month period ending on the Computation Date	
	2. Interest Expense	$_____
	3. Income tax expense (including tax accruals)	$_____
	4. Depreciation and amortization	$_____

2 To be finalized based on updated Projections delivered in for each Subject Period; Include calculation beginning with the Fiscal Quarter ended March 31, 2019

3 As approved by Borrower in its reasonable discretion

4 To be finalized based on updated Projections delivered for each Subject Period; Include calculation beginning with the Fiscal Quarter ended March 31, 2019

5.	nonrecurring cash fees, costs and expenses incurred in connection with (a) the Acquisitions of product licenses and product lines from a third party, and, sales and development milestone payments to any third party, in relation to any material contractual obligation or any other Acquisition or Investment and, to the extent permitted hereunder, issuances or incurrences of Debt, issuances of Equity Interests, Dispositions, Involuntary Dispositions, consolidations, recapitalizations or refinancing transactions and modifications of Indebtedness, whether or not consummated, (b) the negotiation and closing of this Agreement and the Loan Documents, and (c) the Closing Date Acquisition	$_____
6.	Non-cash expenses relating to equity-based compensation, including stock option awards, or purchase accounting	$_____
7.	Any unrealized losses (or minus any such gains) in respect of Hedging Obligations	$_____
8.	Any foreign currency translation losses (or minus any such gains)	$_____
9.	Any net losses (or minus any net gains) attributable to the early extinguishment or conversion of Debt	$_____
10.	Any other nonrecurring and/or non-cash expenses or charges approved by the Agent	$_____
11.	Sum of Items 1 through 10	$_____
12.	Minimum Required for corresponding period	(*See* table to be provided by Agent)[5]
Is the amount in Item 11 equal to or greater than the amount referenced in Item 12?		__ Yes __ No

5 As approved by Borrower in its reasonable discretion

EXHIBIT C

Form of Note

PROMISSORY NOTE

$[_____] **[____], 20[__]**

FOR VALUE RECEIVED and pursuant to the terms of this PROMISSORY NOTE (as amended, restated, supplemented, or otherwise modified from time to time, this "**Note**"), the undersigned, PSIVIDA CORP., a Delaware corporation ("**Borrower**"), having an address at 480 Pleasant, Street, Watertown, MA 02472, promises to pay to the order of **[_____]** (together with all subsequent holders of this Note being hereinafter referred to collectively, as "**Holder**"), at the offices of SWK FUNDING LLC, a Delaware limited liability company, as agent (in such capacity, together with its successors and assigns, the "**Agent**"), on behalf of Holder and the other Lenders (defined below), having an address at 14755 Preston Road, Suite 105, Dallas, Texas 75254, or at such other place as Holder hereof may designate in writing, the principal sum of up to **[_____] DOLLARS ($[_____])**, or such lesser amount as may be advanced by Holder pursuant to that certain Credit Agreement, of even date herewith (as amended, restated, supplemented, or otherwise modified from time to time, the "**Credit Agreement**"), among Borrower, the lenders party thereto from time to time (each a "**Lender**" and collectively, the "**Lenders**"), and Agent, together with interest on the unpaid amount from time to time outstanding under this Note at the rate or rates of interest provided therefor in the Credit Agreement. This Note evidences the obligation of Borrower to repay, with interest thereon, the Loans under the Credit Agreement made by Lenders to Borrower pursuant to the Credit Agreement.

[Signature Page to Credit Agreement]

DEFINITIONS

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

PRINCIPAL AND INTEREST

Principal. Borrower shall make payments on the principal balance of this Note and accrued interest on the principal balance of this Note in accordance with the provisions of the Credit Agreement. If not sooner paid, the entire unpaid principal balance of this Note and all interest thereon shall be paid on the Term Loan Maturity Date.

Interest. Interest on the unpaid balance of this Note will accrue from the date of this Note until final payment thereof in accordance with the applicable provisions of the Credit Agreement.

Prepayments. Borrower may prepay the principal sum outstanding from time to time hereunder as provided in the Credit Agreement, subject to any prepayment premium set forth in the Credit Agreement.

INCORPORATION OF CREDIT AGREEMENT

This Note has been issued pursuant to the Credit Agreement, and all of the terms, covenants and conditions of the Credit Agreement (including all Exhibits and Schedules thereto) and all other instruments evidencing or securing the indebtedness hereunder are hereby made a part of this Note and are deemed incorporated herein in full.

EVENTS OF DEFAULT

Upon the occurrence and during the continuance of an Event of Default, the Holder shall have the rights and remedies set forth in the Credit Agreement and the other Loan Documents, in addition to any other remedies to which the Holder may be entitled.

LAWFUL LIMITS

All agreements between Borrower and Holder are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof, of the Credit Agreement or of any other Loan Documents shall involve transcending the limit of validity prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and, if from any circumstance Holder shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and Holder.

To the extent that either Chapter 303 or 306, or both, of the Texas Finance Code, as amended from time to time, apply in determining the Maximum Lawful Rate notwithstanding that the parties have chosen the laws of the State of New York (or applicable United States federal law to the extent that it permits Holder to contract for, charge, take, receive or reserve a greater amount of interest than the laws of the State of New York) to govern and control in the enforcement, interpretation and construction of the Loan Documents generally, Holder hereby elects to determine the applicable rate ceiling by using the weekly ceiling from time to time in effect, subject to Holder's right from time to time to change such method in accordance with applicable law, as the same may be amended or modified from time to time, to utilize any other method of establishing the Maximum Lawful Rate under the Texas Finance Code or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. To the extent United States federal law permits Holder to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Holder will rely on United States federal law instead of applicable state law for the purpose of determining the Maximum Lawful Rate. As used herein, (*x*) the term "**Maximum Lawful Rate**" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Holder in accordance with the applicable law (or applicable United States federal law to the extent that it permits Holder to contract for, charge, take, receive or reserve a greater amount of interest than under applicable state law), taking into account all Charges made in connection with the transaction evidenced by the Note and the other Loan Documents, and (*y*) the term "**Charges**" shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, received, taken or reserved by Holder in connection with the transactions relating to the Loan Agreement, the Note and the other Loan Documents, which are treated as interest under applicable law.

MISCELLANEOUS

WAIVERS. PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT OR DISHONOR, PROTEST, NOTICE OF PROTEST, DEMAND, NOTICE OF DEMAND, NOTICE OF ACCELERATION OR INTENT TO ACCELERATE AND ALL OTHER NOTICES IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PERFORMANCE, DEFAULT OR ENFORCEMENT OF THIS NOTE ARE HEREBY IRREVOCABLY WAIVED BY BORROWER.

Exercise of Remedies. No delay on the part of Agent or Holder in the exercise of any right, power or remedy hereunder, under the Credit Agreement or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise by Agent or Holder of any right, power or remedy hereunder, under the Credit Agreement or under any other Loan Document preclude other or further exercise thereof, or the exercise of any other right, power or remedy. Upon the occurrence and continuance of an Event of Default, Agent and Holder shall at all times have the right to proceed against any portion of the Collateral in such order and in such manner as Agent and Holder may deem fit, subject to and in accordance with the Credit Agreement, Guarantee and Collateral Agreement and IP Security Agreement without waiving any rights with respect to any other security.

Invalid Provisions. The illegality or unenforceability of any provision of this Note shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Note.

Governing Law. THIS NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

Definition of Note. All references to "Note" or "Notes" in the Loan Documents shall also include this Note, to the extent not returned to Borrower for cancellation, as the same may be amended, supplemented, modified, divided and/or restated and in effect from time to time.

New Notes. Upon Agent's written request (on behalf of Holder) Borrower shall execute and deliver to Agent new Notes and/or split or divide the Notes, or any of them, in exchange for the then existing Notes, in such smaller amounts or denominations as Agent shall specify; provided, that the aggregate principal amount of such new, split or divided Notes shall not exceed the aggregate principal amount of the Notes outstanding at the time such request is made; and provided, further, that such Notes that are replaced shall then be deemed no longer outstanding under the Credit Agreement and replaced by such new Notes and returned to Borrower promptly after Agent's receipt of the replacement Notes.

Replacement Notes. Upon receipt of evidence reasonably satisfactory to Borrower of the mutilation, destruction, loss or theft of any Notes and the ownership thereof, Borrower shall, upon the written request of the holder of such Notes, execute and deliver in replacement thereof new Notes in the same form, in the same original principal amount and dated the same date as the Notes so mutilated, destroyed, lost or stolen; and such Notes so mutilated, destroyed, lost or stolen shall then be deemed no longer outstanding under the Credit Agreement. If the Notes being replaced have been mutilated, they shall be surrendered to Borrower; and if such replaced Notes have been destroyed, lost or stolen, such holder shall furnish Borrower with an indemnity in writing to indemnify, defend and save them harmless in respect of such replaced Notes.

[*Remainder of page intentionally blank; signature page follows*].

IN WITNESS WHEREOF, the undersigned has caused this Promissory Note to be executed as of the day and year first written above.

BORROWER:

PSIVIDA CORP.,

a Delaware corporation

By: _____
Name: _____
Title: _____

Exhibit 10.5

Execution Version

AGREEMENT AND PLAN OF MERGER

by and among

PSIVIDA CORP.,

OCULUS MERGER SUB, INC.

ICON BIOSCIENCE, INC.

and

SHAREHOLDER REPRESENTATIVE SERVICES LLC,

AS STOCKHOLDERS' AGENT

Dated as of March 28, 2018

TABLE OF CONTENTS

Exhibits

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of March 28, 2018, by and among pSivida Corp., a Delaware corporation ("Parent"), Oculus Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), Icon Bioscience, Inc., a Delaware corporation (the "Company") and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the representative of the Company Securityholders (the "Stockholders' Agent"). Parent, Merger Sub, the Company and the Stockholders' Agent are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Upon the terms and subject to the conditions of this Agreement and in accordance with the General Corporation Law of the State of Delaware, as amended ("Delaware Law"), Parent, Merger Sub and the Company will enter into a business combination transaction pursuant to which Merger Sub will merge with and into the Company (the "Merger");

B. The board of directors of the Company has, by resolutions duly adopted: (i) declared that this Agreement, the Merger and the other transactions contemplated by this Agreement are advisable, fair to and in the best interests of the Company and its stockholders; (ii) approved this Agreement in accordance with the provisions of Delaware Law; (iii) directed that this Agreement and the Merger be submitted to the stockholders of the Company for their adoption and approval by written consent; and (iv) recommended that the stockholders of the Company adopt this Agreement and approve the Merger and the other transactions contemplated by this Agreement;

C. The respective boards of directors of Parent and Merger Sub have, by resolutions duly adopted, unanimously declared that this Agreement, the Merger and the other transactions contemplated by this Agreement are advisable, and, in the case of Merger Sub, fair to and in the best interests of Merger Sub and Parent, and approved this Agreement in accordance with the provisions of Delaware Law;

D. Concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Parent and Merger Sub to enter into this Agreement, (i) Cathy Gerlett has entered into and delivered to Parent a consulting agreement with Parent in the form of Exhibit A attached hereto (the "Gerlett Consulting Agreement") and (ii) David Tierney has entered into and delivered to Parent a consulting agreement with Parent in the form of Exhibit B attached hereto (the "Tierney Consulting Agreement," and together with the Gerlett Consulting Agreement, the "Consulting Agreements"), which Consulting Agreements shall become effective as of the Closing;

E. The Company shall solicit an action by written consent approving this Agreement and the Merger by the Required Stockholder Vote (as defined herein) in accordance with Delaware Law and the Company Organizational Documents (as defined herein), substantially in the form of Exhibit C attached hereto, (the "Stockholders' Written Consent"); and

F. The Convertible Debt (as defined herein) has been converted into shares of Series C Preferred Stock (as defined below), effective immediately prior to the Effective Time, pursuant to that certain Amendment to Notes (as defined below).

G. NOW, THEREFORE, in consideration of the covenants, representations and warranties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS

1.1 Certain Defined Terms . As used in this Agreement, the following terms have the following meanings:

"280G Shareholder Vote" has the meaning set forth in Section 5.12.

"Advisory Group" means the individual representatives acting on behalf of the Company Securityholders, for purposes of providing direction to the Payments Administrator and the Stockholders' Agent.

"Affiliate" means, with respect to any Person, another Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by contract, or otherwise, including with respect to a corporation, partnership or limited liability company, direct or indirect ownership of more than fifty percent (50%) of the voting securities in such corporation or of the voting interests in a partnership or limited liability company, and "controlled by" and "under common control" have correlative meanings.

"Aggregate Annual Consideration" means, with respect to the Lead Product in a given Reimbursement Year, the aggregate of (a) Annual Parent Lead Product Net Sales on a worldwide basis, (b) Annual Licensee Lead Product Net Sales and (c) the Annual Company Share of Partnering Income, in each case, in such Reimbursement Year.

"Aggregate Lead Product Net Sales" means, with respect to the Lead Product in a given Reimbursement Year, the aggregate of (a) Annual Parent Lead Product Net Sales on a worldwide basis and (b) Annual Licensee Lead Product Net Sales in the United States, in each case, in such Reimbursement Year.

"Aggregate Other Product Net Sales" means, with respect to the Other Products in a given Reimbursement Year, the aggregate of (a) Annual Parent Other Product Net Sales on a worldwide basis and (b) Annual Licensee Other Product Net Sales in the United States, in each case, in such Reimbursement Year.

"Agreement" has the meaning set forth in the Preamble.

"Amendment to Notes" means that certain Amendment to Notes, substantially in the form attached hereto as Exhibit E, by and among the Company and certain holders of the Convertible Debt.

"Annual Company Share of Partnering Income" means, with respect to the Lead Product in a particular country and in a particular Reimbursement Year, the aggregate Company Share of Partnering Income in respect of Licenses to the Lead Product in such country in such Reimbursement Year.

"Annual Licensee Lead Product Net Sales" means, with respect to the Lead Product in the United States in a particular Reimbursement Year, the aggregate Licensee Net Sales of the Lead Product in the United States in such Reimbursement Year.

"Annual Licensee Other Product Net Sales" means, with respect to the Other Products in the United States in a particular Reimbursement Year, the aggregate Licensee Net Sales of the Other Products in the United States in such Reimbursement Year.

"Annual Parent Lead Product Net Sales" means with respect to the Lead Product in a particular country and in a particular Reimbursement Year, the aggregate Parent Net Sales of the Lead Product in such country in such Reimbursement Year.

"Annual Parent Other Product Net Sales" means with respect to the Other Products in a particular country and in a particular Reimbursement Year, the aggregate Parent Net Sales of the Other Products in such country in such Reimbursement Year.

"Applicable Law" means any supranational or U.S. or foreign national, state, provincial, municipal or local statute, law, constitution, ordinance, code, regulation, rule, notice, court decision, interpretation, agency guidance, order, injunction, stipulation, determination, writ, award, requirement or rule of law (including common law), code or edict issued, enacted, adopted, promulgated, implemented or otherwise put into effect, in each case, by or under the authority of any Governmental Entity.

"Appraisal Rights Statute" has the meaning set forth in Section 2.10.

"Assets" means all tangible and intangible properties and assets (real, personal or mixed), and, in the case of the Company, used or held for use in the operation of the Current Company Business.

"Auditor" means a nationally recognized firm of independent certified public accountants other than the Stockholders' Agent's accountants or Parent's independent registered public accounting firm, selected by the Stockholders' Agent and reasonably acceptable to Parent, which such acceptance shall not be unreasonably withheld, conditioned or delayed (but no longer than ten (10) days from the date of the Stockholders' Agent's notice to Parent of the identity of the Auditor).

"Available Merger Consideration" means the sum of the Escrow Fund (to the extent not yet released) plus Contingent Consideration.

"ASX" has the meaning set forth in Section 6.3(a).

"Baseline Working Capital" means an amount equal to $0, determined in accordance with GAAP.

"Bayh-Dole Act" means the Patent and Trademark Law Amendments Act, 35 U.S.C. §§ 200 et seq., as may be amended or succeeded from time to time, and the regulations promulgated thereunder.

"Business Day" means a day other than a Saturday or Sunday or a day on which banking institutions in Wilmington, Delaware, are permitted or required to be closed.

"Calendar Quarter" means a period of three (3) consecutive months ending on the last day of March, June, September, or December, respectively.

"Calendar Year" means a period of twelve (12) consecutive months beginning on January 1 and ending on December 31.

"Cash" means, as of a given time, with respect to the Company, all cash, cash equivalents and short-term marketable securities held by, or on behalf of, the Company at such time. For avoidance of doubt, Cash shall (a) be calculated net of issued but uncleared checks and drafts, (b) include checks and drafts deposited or held on hand for the account of the Company and (c) not include any "auction rate" or similar securities.

"Catch-Up Sales Milestone Payments" has the meaning set forth in Section 8.2(d).

"CERCLA" has the meaning set forth in Section 3.12(a)(i).

"Certificate of Merger" has the meaning set forth in Section 2.2.

"Certificates" has the meaning set forth in Section 2.7(c).

"cGCP" means Applicable Law concerning the conduct of clinical trials, including 21 C.F.R. Parts 50, 54, 56, and 312 in effect as of the date a clinical trial for a product was conducted, relevant guidances of Governmental Entities and prevailing industry practices for similarly situated companies.

"cGLP" means Applicable Law concerning the conduct of applicable non-clinical studies, including 21 C.F.R. Part 58 in effect as of the date a non-clinical study for a product was conducted, relevant guidances of Governmental Entities and prevailing industry practices for similarly situated companies.

"cGMP" means Applicable Law concerning manufacturing practices for pharmaceutical and diagnostic products (and components thereof), as may be amended from time to time, including any Applicable Law or relevant guidance that has been promulgated by (a) the FDA, including at 21 C.F.R. Parts 210 and 211 and (b) any other applicable Governmental Entity in each jurisdiction where, as of the Closing Date, the Company, or a Third Party acting on its behalf, is undertaking, has undertaken, or has entered into a contractual obligation to undertake any manufacturing or related activities.

"Charter" means the Company's Fourth Amended and Restated Certificate of Incorporation, as amended.

"Claim" means any claim, suit, action, arbitration, mediation, cause of action, complaint, charge, allegation, criminal prosecution, investigation, demand letter, or proceeding, whether at law or at equity, before or by any Governmental Entity, arbitrator, other tribunal, or any other Person, and any information request from a Governmental Entity.

"Claim Notice" has the meaning set forth in Section 9.5(a).

"Closing" has the meaning set forth in Section 2.2.

"Closing Cash" means the aggregate amount of all Cash of the Company as of the time (on the Closing Date) immediately prior to the consummation of the Merger.

"Closing Date" has the meaning set forth in Section 2.2.

"Closing Date Company Intellectual Property" means the Company Intellectual Property in existence or being prosecuted as of the Closing Date or claims priority to any Company Patent in such Company Intellectual Property; *provided*, that Company Intellectual Property being prosecuted as of the Closing Date shall cease to be Closing Date Company Intellectual Property on the date on which it is abandoned.

"Closing Date Statement" has the meaning set forth in Section 2.15(b).

"Closing Debt" means the aggregate amount of all Indebtedness of the Company as of the time (on the Closing Date) immediately prior to the consummation of the Merger.

"Closing Merger Consideration" means: (a) Fifteen Million Dollars ($15,000,000) in cash; plus (b) if the Estimated Working Capital is greater than the Baseline Working Capital, the difference between the Estimated Working Capital and the Baseline Working Capital, minus (c) if

the Estimated Working Capital is less than the Baseline Working Capital, the difference between the Baseline Working Capital and the Estimated Working Capital, plus (d) the Final Closing Cash, minus (e) the Final Closing Debt, minus (f) the Final Unpaid Company Transaction Expenses, minus (g) the Escrow Amount, and minus (h) the Expense Fund.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and as codified in Section 4980B of the Code and Section 601 et seq. of ERISA.

"Code" means the Internal Revenue Code of 1986, as amended.

"Combination Product" means a single pharmaceutical formulation or preparation containing the Lead Product and at least one other therapeutically active pharmaceutical ingredient which is not the Lead Product, but which is used in combination with the Lead Product.

"Commercially Reasonable Efforts" means, with respect to Parent and its Affiliates and the Lead Product, the expenditure of efforts in a diligent manner and using resources, including personnel and financial resources, typical of a company of similar size, means and type in the pharmaceutical industry, with respect to the commercialization of a similar product of similar market potential at a similar stage of product life, in each case, taking into account all scientific, commercial and other factors, including issues of safety and efficacy, the expected and actual profitability (without reference to the Development Milestone Payment paid or owed pursuant to this Agreement or the Lead Product Earn-Out Payments prior to the Lead Product no longer being separately reimbursable under Medicare), the expected and actual competitiveness of alternative Third Party products (including generic products) in the marketplace, the nature and extent of expected and actual market exclusivity (including patent coverage and regulatory exclusivity), the expected and actual labeling, the expected and actual reimbursability and pricing, the expected and actual amounts of marketing and promotional expenditures required, and all other relevant factors, including technical, legal, scientific, medical and other factors, all as measured by the facts and circumstances at the time such efforts are due, it being understood that Commercially Reasonable Efforts may dictate ceasing commercialization or additional development efforts with respect to the Lead Product. Notwithstanding anything to the contrary, Commercially Reasonable Efforts shall be determined without regard to the Development Milestone Payment paid or owed pursuant to this Agreement or the Lead Product Earn-Out Payments payable prior to the Lead Product no longer being separately reimbursable under Medicare.

"Company" has the meaning set forth in the Preamble.

"Company Balance Sheet" has the meaning set forth in Section 3.3(a).

"Company Balance Sheet Date" has the meaning set forth in Section 3.5(a).

"Company Capital Stock" means all shares of Company Common Stock, Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock.

"Company Common Stock" means shares of Company's common stock, par value $0.00001 per share.

"Company Disclosure Letter" means the disclosure letter, dated as of the date hereof, delivered by the Company to Parent and Merger Sub, pursuant to Article III, in connection with this Agreement.

"Company Employee Plan" means any compensation, employment, consulting, severance, termination pay, deferred compensation, retirement, profit-sharing, retention, change in control, stock or stock-related, bonus, incentive, employee stock ownership, medical, dental, life, disability, welfare, death, life insurance, fringe benefit or other employee benefit or remuneration plan, program, policy, practice, contract, agreement or other arrangement, whether written or unwritten, funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, which is sponsored, maintained, contributed to, or required to be contributed to, by the Company for the benefit of any Employee, or with respect to which the Company has or may have any liability or obligation.

"Company Financial Statements" has the meaning set forth in Section 3.3(a).

"Company Material Adverse Effect" means any event, circumstance, change or effect that, individually or in the aggregate, has or would reasonably be expected to have a material adverse effect on (a) the condition (financial or otherwise), assets, liabilities, business, operations, or results of operations of the Company, in each case taken as a whole, or (b) the ability of the Company to consummate the transactions contemplated by this Agreement; *provided*, *however*, that none of the following shall be deemed, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Company Material Adverse Effect: (i) conditions affecting (A) the pharmaceutical industry or (B) the U.S. economy or financial markets, except, in each case, to the extent that such conditions have a disproportionate impact on the Company relative to other companies in the industry or region in which the Company operates; (ii) any failure by the Company to meet internal or other estimates, predictions, projections or forecasts, including as provided to Parent by the Company or any of the Company's representatives, related to revenue, operating expenses, net income or any other measure of financial performance (*provided*, that the facts giving rise or contributing to any such failure may be deemed to constitute, or be taken into account in determining whether there has been, a Company Material Adverse Effect); (iii) the taking of any action by Parent, Merger Sub, or any of Parent's other Subsidiaries; (iv) any change in accounting requirements or principles required under GAAP or IFRS or any change in Applicable Laws; or (v) acts of war or terrorism or any escalation or material worsening of any such acts of war or terrorism.

"Company Options" means options to purchase shares of Company Common Stock or shares of common stock of Surviving Corporation after the Effective Time.

"Company Option Plan" means the Icon Bioscience, Inc. 2007 Stock Incentive Plan, as amended.

"Company Organizational Documents" means the Charter and the Company's bylaws, each as in effect on the date hereof.

"Company-Owned IP Rights" has the meaning set forth in Section 3.8(a)(vii).

"Company Patent" means any Patent Rights owned or Controlled by the Company immediately prior to the Closing, together with all substitutions, additions, continuations, continuations in part, divisions, additions, renewals, reissues, re-examinations and extensions thereof.

"Company Portfolio IP" has the meaning set forth in Section 3.8(c).

"Company Securityholders" means, collectively, the Company Stockholders and those Persons who held outstanding Company Options and Warrants, in each case, immediately prior to the Effective Time.

"Company Share of Partnering Income" has the meaning set forth in Section 8.4.

"Company Share of Pediatric Trial Costs" means, as of the date of calculation of any Earn-Out Consideration, fifty percent (50%) of any Outstanding Pediatric Trial Costs as of such date; provided that the aggregate amount of Company Share of Pediatric Trial Costs for all periods shall not exceed $2,000,000.

"Company Stockholders" means those Persons who held shares of outstanding Company Capital Stock immediately prior to the Effective Time (other than any holder of outstanding Company Options or Warrants immediately prior to the Effective Time).

"Company Transaction Expenses" means all fees, costs, expenses, payments, expenditures or Liabilities of the Company (including those described in Section 10.11 of this Agreement) incurred prior to or at the Effective Time, whether or not invoiced prior to the Effective Time, that relate to the Agreement or any of the transactions contemplated by the Agreement, including any fees, costs or expenses payable to the Company's outside legal counsel or to any financial advisor, accountant or other Person who performed services for or on behalf of the Company, or who is otherwise entitled to any compensation from the Company, in connection with the Agreement or any of the transactions contemplated by the Agreement. Without limiting the generality of the foregoing, Company Transaction Expenses shall include (a) the aggregate amount of any accrued benefits, accrued vacation, final wages, severance, transaction bonuses or other remuneration payable to any Employee whose employment with the Company is terminated prior to or contemporaneous with the Effective Time (including the employer portion of any payroll, employment, social security, unemployment or similar Taxes imposed on such amounts); and (b) fifty percent (50%) of the

premium paid to purchase the "tail" or "run-off" policies referenced in Section 5.9(b) and Section 5.10; (c) the aggregate amount of all fees and expenses paid or payable to the Company's consultants, contractors and independent registered public accounting firm(s) in connection with the preparation and audit of the Company's audited financial statements for the fiscal year ended December 31, 2017; (d) the aggregate amount of fees and expenses paid or payable to the Payments Administrator and Stockholders' Agent; and (e) fifty percent (50%) of the Escrow Agent fees.

"Confidentiality Agreement" has the meaning set forth in Section 5.1(a).

"Consulting Agreements" has the meaning set forth in Recital D.

"Contingent Consideration" means the Development Milestone Payment, the Sales Milestone Payments, the Earn-Out Payments and the Company Share of Partnering Income.

"Contract" means any bond, debenture, note, warrant, purchase order, mortgage, indenture, guarantee, lease or other contract, commitment, agreement, instrument, obligation, undertaking, license or other legally binding arrangement or understanding, whether written or oral.

"Contract Workers" means independent contractors, consultants, temporary employees, leased employees, retired persons entitled to payment from the Company, or other service providers employed or used by the Company who are not (a) classified by the Company as employees or (b) compensated by the Company through wages reported on a form W-2.

"Control" or "Controlled" means, when used with respect to any IP Rights or other intangible property, and only in such case, the possession and right of use (whether by license, ownership, or non-suit, non-infringement or co-existence agreement, or by control over an entity having possession and right of use by license, ownership, or non-suit, non-infringement or co-existence agreement) by a Person and the ability to grant to another Person access, right of use or a license or sublicense without violating the terms of any written Contract with any Third Party or any right of any Person.

"Convertible Debt" has the meaning set forth in Section 2.13(a)(ii) of the Company Disclosure Letter.

"Copyrights" has the meaning set forth in Section 3.8(a)(ii).

"Covered Person" has the meaning set forth in Section 5.9(a).

"Current Company Business" has the meaning set forth in Section 3.1.

"Current Government Contract" means any Government Contract, the period of performance of which has not yet expired or terminated or for which final payment has not yet been received.

"Deductible" has the meaning set forth in Section 9.2(e).

"Delaware Law" has the meaning set forth in Recital A.

"Development Milestone" has the meaning set forth in Section 8.1(a).

"Development Milestone Payment" has the meaning set forth in Section 8.1(a).

"Disclosure Materials" has the meaning set forth in Section 3.23.

"Disqualified Individual" has the meaning set forth in Section 3.14(f)(ii).

"Dissenting Shares" has the meaning set forth in Section 2.10.

"Dissenting Stockholder" has the meaning set forth in Section 2.10.

"Dollars" or "$" means the legal tender of the United States.

"DOJ" has the meaning set forth in Section 6.3(a).

"Earn-Out Consideration" means the Earn-Out Payments and the Company Share of Partnering Income.

"Earn-Out Payments" means the Lead Product Earn-Out Payments and the Other Product Earn-Out Payments, collectively.

"Earn-Out Term" has the meaning set forth in Section 8.3(d).

"Effective Time" has the meaning set forth in Section 2.2.

"Employee" means any current or former or retired employee, individual officer or director of the Company. For the avoidance of doubt, nothing in this Agreement shall be deemed to give any Person any claim to be treated as an employee of the Company.

"Environmental Laws" has the meaning set forth in Section 3.12(a)(i).

"Equity Participations" means any (a) share, quota, security, participation right and any other present or future right entitling the holder, absolutely or contingently (through the exercise of any subscription, conversion, exchange, option or similar right), to participate in the revenues, dividends or equity appreciation of another Person, including capital stock, membership interests, units, performance units, options, restricted stock, warrants, company appreciation rights, interests in "phantom" stock plans, restricted or contingent stock or profits interests, voting securities, stock appreciation rights or equivalents, stock loan purchase plans, convertible debentures or stock bonus plans and (b) commitments to issue any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means each individual or entity controlling, controlled by or under common control with the Company within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

"Escrow Agent" means SunTrust Bank.

"Escrow Agreement" means an escrow agreement substantially in the form of Exhibit D attached hereto, subject to any amendments that are reasonably requested by the Escrow Agent and mutually agreed to by Parent and the Stockholders' Agent.

"Escrow Amount" means One Million Five Hundred Thousand Dollars ($1,500,000).

"Escrow Fund" means the escrow fund established by deposit of the Escrow Amount with the Escrow Agent in accordance with the terms of this Agreement and the Escrow Agreement, which funds are to be administered by the Escrow Agent pursuant to the provisions of this Agreement and the Escrow Agreement.

"Estimated Closing Cash" has the meaning set forth in Section 2.15(a).

"Estimated Closing Debt" has the meaning set forth in Section 2.15(a).

"Estimated Closing Merger Consideration" means: (a) Fifteen Million Dollars ($15,000,000) in cash; plus (b) if the Estimated Working Capital is greater than the Baseline Working Capital, the difference between the Estimated Working Capital and the Baseline Working Capital, minus (c) if the Estimated Working Capital is less than the Baseline Working Capital, the difference between the Baseline Working Capital and the Estimated Working Capital, plus (d) the Estimated Closing Cash, minus (e) the Estimated Closing Debt, minus (f) the Estimated Unpaid Company Transaction Expenses, minus (g) the Escrow Amount, and minus (h) the Expense Fund.

"Estimated Unpaid Company Transaction Expenses" has the meaning set forth in Section 2.15(a).

"Estimated Working Capital" has the meaning set forth in Section 2.15(a).

"Excess Consideration" has the meaning set forth in Section 2.15(d).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Expense Fund" means $100,000.

"FDA" means the United States Food and Drug Administration or any successor agency thereto.

"FDCA" means the Federal Food, Drug, and Cosmetic Act and the implementing regulations of the FDA, each as may be amended from time to time.

"Final Closing Cash" has the meaning set forth in Section 2.15(b).

"Final Closing Debt" has the meaning set forth in Section 2.15(b).

"Final Unpaid Company Transaction Expenses" has the meaning set forth in Section 2.15(b).

"Final Working Capital" has the meaning set forth in Section 2.15(b).

"First Commercial Sale" means, with respect to the Lead Product or any Other Product, the first bona fide sale for monetary value by Parent, one or more of its Affiliates or one or more of its licensees or sublicensees of such product to a Third Party customer (e.g., a hospital, health system, ambulatory surgical center or distributor) for use or consumption in an arm's-length transaction after the receipt of Regulatory Approval. For the avoidance of doubt, sales or transfers of reasonable quantities of the Lead Product or Other Product for clinical trial purposes, or for compassionate or similar use, shall not be considered a First Commercial Sale. In addition, sales to an Affiliate of Parent or a licensee or sublicensee of Parent shall not constitute a First Commercial Sale unless such Affiliate, licensee or sublicensee is the end user of the Lead Product or the Other Product.

"FTC" has the meaning set forth in Section 6.3(a).

"Fundamental Reps" means the representations and warranties set forth in Section 3.1 (Organization, Power and Standing), Section 3.2 (Authority), Section 3.4 (Capitalization; Shares and Stockholder Information), Section 3.12 (Environmental), Section 3.13 (Taxes), Section 3.14 (Employee Benefit Plans), Section 3.17 (Brokers' and Finders' Fee) and Section 3.23 (Approval by Stockholders).

"Future Sales Milestone Payment" has the meaning set forth in Section 8.2(f).

"Future Sales Thresholds" has the meaning set forth in Section 8.2(f).

"GAAP" means, with respect to any Person, accounting principles generally accepted in the United States, as consistently applied by such Person.

"Generic Approval" means, with respect to a pharmaceutical product for which Regulatory Approval has been granted in any country or jurisdiction, a subsequent marketing approval for another pharmaceutical product in such country or any other country that is granted based upon reference to such Regulatory Approval (or any of its active pharmaceutical ingredient(s)), or to any regulatory materials or clinical data underlying such existing marketing approval, whether pursuant to 21 U.S.C. § 355(b)(2) or an abbreviated new drug application, including foreign equivalents of the foregoing, as applicable.

"Generic Version" means, with respect to the Lead Product and a given country or jurisdiction, a version of such product that: (a) contains the same active pharmaceutical ingredient(s) as such product (and no other active pharmaceutical ingredient(s)); (b) has the same conditions of use; (c) has the same dosage form, strength and route of administration; (d) is approved for marketing or sale in such country or jurisdiction pursuant to a Generic Approval; and (e) is sold by a Third Party in such country or jurisdiction pursuant to such Generic Approval. For the avoidance of doubt, any product whose route of administration is other than intraocular injection in the posterior chamber at the end of surgery is not a Generic Version.

"Gerlett Consulting Agreement" has the meaning set forth in Recital D.

"Government Contract" means any prime Contract, subcontract, grant, teaming agreement or arrangement, cooperative agreement, joint venture, basic ordering agreement, pricing agreement, letter Contract or other similar arrangement of any kind, between the Company, on the one hand, and (a) any Governmental Entity, (b) any prime contractor of a Governmental Entity in its capacity as a prime contractor, or (c) any subcontractor with respect to any Contract of a type described in clauses (a) or (b) above, on the other hand.

"Governmental Entity" means any supranational or U.S. or foreign national, provincial, state, municipal or local government, governmental, regulatory or administrative authority, agency, body, branch or bureau, instrumentality or commission or any court, tribunal or judicial or arbitral body.

"Hazardous Materials" has the meaning set forth in Section 3.12(a)(ii).

"Health Care Laws" means, (a) the Medicare and Medicaid coverage and reimbursement provisions (Title XVIII and Title XIX of the Social Security Act, respectively), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the Civil Monetary Penalty Law (42 U.S.C. § 1320a-7a), the federal civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d et seq.) ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921(2) et seq.), including the false statement and other health care fraud criminal provisions of HIPAA, the exclusion authorities (42 U.S.C. 1320a-7), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), Section 1128H of the Social Security Act (42 U.S.C. § 1320a-7i) and any comparable, local, state, federal, national or foreign law similar to the foregoing, each as amended, all regulations or guidance promulgated pursuant to such Applicable Laws, and any other Applicable Laws related to kickbacks, patient or program charges, recordkeeping, claims process, documentation requirements, medical necessity, referrals, the hiring of employees or acquisition of services or supplies from those who have been excluded from government health care programs, privacy, security, licensure, accreditation or any other aspect of providing pharmaceutical, biotechnology, biological or diagnostic products and (b) the FDCA, and any other Applicable Law that regulates the design, research, development, testing, manufacturing, approval, clearance, processing, storing, importing or exporting, licensing, labeling, packaging, distributing, recordkeeping, promotion or marketing of pharmaceutical products.

"HSR Act" means the Hart-Scott Rodino Antitrust Improvements Act of 1976 as amended, and the rules and regulations promulgated thereunder.

"ICC" has the meaning set forth in Section 10.7(b).

"IFRS" means the International Financial Reporting Standards, consistently applied.

"Indebtedness" means, with respect to the Company, the following: (a) all indebtedness of the Company for borrowed money (in each case, including all obligations for the outstanding principal amount, accrued and unpaid interest, prepayment penalties, premiums, fees, penalties, expenses, breakage costs and other similar items thereunder) with respect to deposits or advances of any kind or for the deferred purchase price of property or services, (b) all obligations of the Company evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of the Company under conditional sale or other title retention agreements relating to property or assets purchased by the Company, (d) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property owned or acquired by the Company, whether or not the obligations secured thereby have been assumed, (e) all guarantees by the Company of indebtedness of others, (f) all obligations of the Company under leases which are required to be capitalized in accordance with GAAP; (g) all obligations of the Company for amounts owed with respect to drawn letters of credit or as an account party in respect of banker's acceptances, and (h) all obligations of the Company consisting of overdrafts (e.g., cash float reflected as a negative on the cash line).

"Indemnification Offset Payment" has the meaning set forth in Section 9.2(a).

"Indemnified Persons" means (a) the Parent Indemnitees or (b) the Seller Party Indemnitees, as applicable.

"Indemnifying Persons" has the meaning set forth in Section 9.5(a).

"Infringe" means infringe, misappropriate, dilute or tarnish (as the terms "dilute" and "tarnish" are used to refer to certain actions giving rise to a cause of action on the part of a trademark owner under trademark law), use in any unauthorized manner where authorization is required under Applicable Law or Contract, or otherwise violate, any IP Rights, and such term includes the conjugated forms of each of the foregoing, as applicable.

"Initial Testing Date" means the last day of the third Reimbursement Year.

"Insurance Policies" has the meaning set forth in Section 3.15(a).

"IP License" has the meaning set forth in Section 3.8(a)(iii).

"IP Reps" means the representations and warranties set forth in Section 3.8 (Intellectual Property).

"IP Rights" has the meaning set forth in Section 3.8(a)(i).

"IP Termination Date" means the date that is thirty six (36) months following the Closing Date.

"IRS" means the United States Internal Revenue Service or any successor agency thereto.

"IT Assets" has the meaning set forth in Section 3.8(n).

"knowledge" means, with respect to the Company, the knowledge of David Tierney and Joyce Erony, after due inquiry of other executives and employees having responsibility for such matters.

"Lead Product" means the product currently referred to as "Dexycu™" for the treatment of postoperative inflammation as more fully described in Section 1.1(a) of the Company Disclosure Letter.

"Lead Product Earn-Out Payments" has the meaning set forth in Section 8.3(a).

"Lead Product Earn-Out Rate" has the meaning set forth in Section 8.3(a).

"Lease" and "Leases" have the meanings set forth in Section 3.11(a).

"Leased Real Property" has the meaning set forth in Section 3.11(a).

"Liabilities" means any debt, liability or obligation of any kind, character or nature, whether secured or unsecured, fixed, absolute, or contingent.

"Liability Cap" means an amount equal to the sum of (a) $1,500,000, *plus* (b) ten percent (10%) of the Contingent Consideration actually paid under Section 8.1 (including for this purpose the amount of any Indemnification Offset Payment withheld from such Contingent Consideration actually paid under Section 8.1).

"License" means, with respect to the Lead Product or any Other Product, any agreement however captioned and regardless of how the conveyances are referred to therein, in which Parent or any of its Affiliates directly or indirectly: (a) grants or otherwise conveys to a Third Party the right to commercialize the Lead Product in a particular geographical territory; (b) agrees not to assert any Closing Date Company Intellectual Property against a Third Party; (c) authorizes or licenses the making, offering for sale, using, selling or importing by a Third Party of the Lead Product or any product that uses or practices any Closing Date Company Intellectual Property; or (d) agrees not to practice any Closing Date Company Intellectual Property. For the avoidance of doubt, "License" shall not include any license or sublicense to a Third Party performing development, manufacturing, distribution, promotion or other services on behalf of Parent or its Affiliates.

"Licensee" means a Third Party to whom Parent or its Affiliate has granted a License, including such Licensee's Affiliates.

"Licensee Net Sales" means, with respect to the Lead Product or Other Products, Net Sales by a Licensee in the United States.

"Losses" means any liabilities, losses, claims, damages, Taxes, interest obligations, deficiencies, judgments, assessments, fines, fees, penalties and expenses (including amounts paid in settlement, interest, court costs, fees and expenses of attorneys, accountants, financial advisors, consultants, investigators and other experts and other expenses of litigation); *provided*, *however*, that Losses shall not include any special or punitive damages (except, and only to the extent, awarded pursuant to a Third Party Claim).

"Mailing Date" has the meaning set forth in Section 2.7(c).

"Material Contract" has the meaning set forth in Section 3.9(c).

"Merger" has the meaning set forth in Recital A.

"Merger Consideration" shall equal the aggregate amount of (a) the Estimated Closing Merger Consideration, (b) to the extent paid to the Payments Administrator for the benefit of the Company Securityholders pursuant to Section 2.15, the Excess Consideration, (c) to the extent paid to the Payments Administrator for the benefit of the Company Securityholders pursuant to Sections 8.1 and 8.2, the Milestone Consideration, (d) to the extent paid to the Payments Administrator for the benefit of the Company Securityholders pursuant to Sections 8.3 and 8.4, the Earn-Out Consideration, and (e) to the extent paid to the Payments Administrator for the benefit of the Company Securityholders pursuant to the Escrow Agreement, the Escrow Amount.

"Merger Sub" has the meaning set forth in the Preamble.

"Milestone Consideration" means the Development Milestone Payment and the Sales Milestone Payments.

"Modified Sales Milestone Payment" has the meaning set forth in Section 8.2(c).

"Multiemployer Plan" means a "multiemployer plan," as defined in Section 3(37) of ERISA.

"Necessary Consent" has the meaning set forth in Section 3.2(b).

"Net Sales" means, with respect to the Lead Product or Other Product and on a product-by-product basis, the gross amount invoiced by any of Parent, Surviving Corporation, their respective Affiliates or Licensees for sales of such product by any of Parent, Surviving Corporation, any of their respective Affiliates or Licensees in bona fide arm's-length transactions to unaffiliated Third Parties, less (a) the following deductions in respect of such product calculated in accordance with GAAP:

(i) reasonable and customary quantity, trade or cash discounts, and other usual and customary discounts to customers actually taken;

(ii) amounts accrued by reason of price reductions or rebates, retroactive or otherwise, imposed by, negotiated with, or otherwise paid to Governmental Entities in respect of any state or federal Medicare, Medicaid or similar programs or other payors (including any group purchasing organization administrative fees, rebates and the like);

(iii) Taxes on sales (such as sales, value added, or use Taxes) separately itemized as such in the gross amount invoiced;

(iv) amounts repaid or credited by reason of rejections, defects, return of goods allowance, recalls, or returns, or because of retroactive price reductions, including rebates or wholesaler chargebacks;

(v) freight, insurance, export/import, and other transportation charges itemized as such in the gross amount invoiced;

(vi) bad debts or otherwise uncollectible amounts actually written off which are attributable to the sale of such product; provided that amounts that are written off but subsequently collected will be included in Net Sales in the Calendar Quarter in which the collection is made; and

(vii) any royalty, milestone and/or other payment obligations due to Third Parties in respect of IP Rights in connection with the development, manufacture or commercialization of such product.

For the sake of clarity, Net Sales shall not include transfers or dispositions for charitable, promotional, pre-clinical, clinical, regulatory or governmental purposes, provided no monetary consideration above the cost to supply the Lead Product or Other Product, as applicable, is received for such transfer or disposition.

In the event that the Lead Product or Other Product is sold as part of a Combination Product in any country, the Net Sales for the purposes of determining Contingent Consideration shall be determined by multiplying the Net Sales (as defined above) of the Combination Product by the fraction, A/(A+B) where A is the weighted (by sales volume) average sale price in such country of the Lead Product or Other Product when sold separately in finished form, and B is the aggregate weighted average sale price in such country of the other therapeutically active ingredient(s) or product(s) included in such Combination Product when sold separately in finished form. In the event that such average sale price cannot be determined for both the Lead Product or Other Product and

the other therapeutically active ingredient(s) or product(s) included in the Combination Product, Net Sales for purposes of determining Contingent Consideration shall be agreed by the Parties in writing based on the relative value contributed by each component, such agreement not to be unreasonably withheld, conditioned, or delayed; *provided*, that in the event of a disagreement with respect to such relative values, the Parties shall engage a mutually agreed upon independent expert to make the final determination with respect thereto.

"Neutral Auditor" means a nationally recognized firm of independent certified public accountants other than the Stockholders' Agent's accountants or Parent's independent registered public accounting firm, mutually agreed to by the Stockholders' Agent and Parent.

"Noncompliant Securityholder" means any holder of Company Options that has not delivered the Option Surrender Agreement in accordance with the terms of this Agreement.

"Non-Defense Election" has the meaning set forth in Section 9.6(a).

"Note" means a note or notes representing Convertible Debt outstanding prior to the conversion and termination of such notes pursuant to the Amendment to Notes.

"Objection Notice" has the meaning set forth in Section 2.15(b).

"Option Surrender Agreement" has the meaning set forth in Section 2.12(a).

"Order" has the meaning set forth in Section 6.1(a).

"Other Product" means any product that is covered by a Valid Claim of any Company Patent included in any of the Closing Date Company Intellectual Property, other than the Lead Product.

"Other Product Earn-Out Payments" has the meaning set forth in Section 8.3(b).

"Outstanding Pediatric Trial Costs" means, as of the date of calculation of any Earn-Out Consideration, the aggregate of (a) all Pediatric Trial Costs incurred by Parent, Surviving Corporation or any of their Affiliates, as of such date, minus (b) all Pediatric Trial Costs used in the calculation of the Company Share of Pediatric Trial Costs prior to such date, plus (c) any Pediatric Trial Costs rolled forward pursuant to Section 8.5.

"Parent" has the meaning set forth in the Preamble.

"Parent Disclosure Letter" means the disclosure letter, dated as of the date hereof, delivered by Parent and Merger Sub to the Company, pursuant to Article IV, in connection with this Agreement.

"Parent Indemnitees" means Parent and the Surviving Corporation and their respective officers and directors and Affiliates.

"Parent Net Sales" means, with respect to the Lead Product or Other Product, Net Sales by Parent, Surviving Corporation or their respective Affiliates on a worldwide basis.

"Parent Organizational Documents" means Parent's Certificate of Incorporation, as amended, and Parent's bylaws, each as in effect on the date hereof.

"Parent SEC Reports" means all registration statements, forms, reports and other documents filed by Parent with the SEC since January 1, 2016.

"Partnering Income" means net amounts actually received by Parent, Surviving Corporation, and their Affiliates in consideration for the grant of a License with respect to any jurisdiction(s) outside the United States. "Partnering Income" includes such amounts received in the form of license issue fees, upfront payments, milestone payments, and the like, as consideration for the License, and specifically includes royalties on net sales of the Lead Product and Other Products, in the case of a profit-sharing arrangement, net profits and/or net revenue sharing payments made to Parent, Surviving Corporation, and their respective Affiliates in respect of the Lead Product and Other Products under the License; *provided*, in each case, that such amounts are not treated as Net Sales, and; *provided*, *further*, that "Partnering Income" shall not include: (a) consideration received for the purchase of equity in Parent, Surviving Corporation, or their Affiliates, up to the fair market value of such equity, or the purchase of any debt instruments in Parent, Surviving Corporation, or their Affiliates; or (b) bona fide payments made in consideration for past or future research, development, manufacturing, co-promotion, consulting or other activities or services conducted or provided by Parent, Surviving Corporation, or their Affiliates related to the Lead Product, or any adjustments to profit-sharing arrangements on account of the foregoing, up to the fair market value of such services (including a commercially reasonable margin over the cost of such services).

In the event Parent, Surviving Corporation, or their Affiliates receive consideration in connection with the grant of a License and the grant of a license or sublicense to any other intellectual property rights of Parent, Surviving Corporation, or their Affiliates (including intellectual property rights owned by such Person or licensed to such Person from a Third Party), whether granted in the same agreement as such other License or in separate agreements, only the portion of such consideration reasonably allocable to the License shall be considered Partnering Income.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Pass-Through Reimbursement" means a Medicare reimbursement classification in which a product is paid under Medicare's hospital outpatient prospective payment system on a pass-through basis under Section 1833(t)(6) of the Social Security Act (42 U.S.C. § 1395l(t)(6)).

"Patent Rights" has the meaning set forth in Section 3.8(a)(iv).

"Payments Administrator" means Acquiom Financial LLC, a Colorado limited liability company.

"Payout Schedule" has the meaning set forth in Section 5.15.

"Pediatric Trial" means that certain Phase 3/4 prospective, randomized, active treatment-controlled, parallel-design multicenter trial to evaluate the safety of the Lead Product for the treatment of inflammation following ocular surgery for childhood cataract, to be conducted following the Effective Time, as required by the FDA pursuant to the Pediatric Research Equity Act (21 U.S.C. 355c), and any subsequent clinical trial of the Lead Product required by the FDA in light of any data generated in such trial.

"Pediatric Trial Costs" means all documented and reasonable fees, costs and expenses of Third Parties incurred by Parent, Surviving Corporation, or any of their Affiliates, in connection with the Pediatric Trial, including any regulatory costs associated therewith, whether incurred before, during, or after the conduct of such trial; *provided*, that Parent, Surviving Corporation or their Affiliates use Clinical Research Management Group to conduct the Pediatric Trial, or another reputable Third Party contract research organization with sufficient experience and resources to conduct the Pediatric Trial in accordance with Applicable Law (a) identified by the Stockholders' Agent within fifteen (15) Business Days of any request by Parent to identify such Third Party and (b) reasonably acceptable to Parent, such acceptance not to be unreasonably withheld, conditioned, or delayed; *provided*, *further*, that if the Stockholders' Agent fails to identify a Third Party to conduct the Pediatric Trial in accordance with this definition, the foregoing proviso shall not apply and the costs and expenses of any Third Party reasonably selected by Parent to conduct the Pediatric Trial shall constitute Pediatric Trial Costs hereunder. For the avoidance of doubt, Pediatric Trial Costs does not include any internal costs of Parent, Surviving Corporation or their Affiliates, such as salary and benefits of personnel of Parent, Surviving Corporation or their Affiliates, rent or overhead.

"Permits" has the meaning set forth in Section 3.16(c).

"Permitted Encumbrances" has the meaning set forth in Section 3.10.

"Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

"Personally Identifiable Information" has the meaning set forth in Section 3.8(o).

"Personally Identifiable Information Obligations" has the meaning set forth in Section 3.8(o).

"Pre-Closing Tax Period" has the meaning set forth in Section 9.2(a)(vi).

"Preferred Stock" has the meaning set forth in Section 3.4(a).

"Product" means the Lead Product and those product candidates identified by the Company as "IBI-20089," "IBI-60089," "IBI-30089," "IBI-70090," "IBI-80090" and "NSAID", including the Company's drug delivery platform known as Verisome®, in each case as more fully described in Section 1.1(c) of the Company Disclosure Letter.

"Proposed Closing Cash" has the meaning set forth in Section 2.15(b).

"Proposed Closing Debt" has the meaning set forth in Section 2.15(b).

"Proposed Closing Merger Consideration" has the meaning set forth in Section 2.15(b).

"Proposed Final Working Capital" has the meaning set forth in Section 2.15(b).

"Proposed Unpaid Company Transaction Expenses" has the meaning set forth in Section 2.15(b).

"RCRA" has the meaning set forth in Section 3.12(a)(i).

"Regulatory Approval" means, with respect to a particular jurisdiction, such approvals, licenses, registrations, notifications or authorizations by any Regulatory Authority as are necessary for the sale or commercialization of a product in such jurisdiction, excluding any approval of pricing and/or reimbursement for such product in such jurisdiction.

"Regulatory Authority" means any applicable federal, national, multinational, regional, state, provincial or local agency, department, bureau, commission, council, or other Governmental Entity, regulating or otherwise exercising authority with respect to any pharmaceutical, biological or diagnostic products. For clarity, references in this Agreement to Regulatory Authority shall include the FDA and any foreign equivalent thereof.

"Reimbursement Year" means a period of twelve (12) consecutive months, with the first such twelve consecutive month period beginning on the first day of the first full Calendar Quarter in which the United States Centers for Medicare and Medicaid Services makes Pass-Through Reimbursement effective for the Lead Product and ending on the last day of the calendar month that ends immediately prior to the one-year anniversary of such date and each consecutive twelve (12) months after such anniversary. Each such twelve-month period shall be a Reimbursement Year.

"Related Party" means each of the following: (a) all individuals who are, or who were at the time of the entry into the transaction or the creation of the interest in question an officer, director, or holder of, beneficially or otherwise, at least five percent (5%) of the voting interest or class of any outstanding Equity Participations of the Company; (b) each member of the immediate family of each of the Persons referred to in subclause "(a)" above; (c) any Person (other than the Company) in which, to the Company's knowledge, any one or more of the Persons referred to in subclauses "(a)"

and "(b)" above holds (or in which more than one of such Persons collectively hold), beneficially or otherwise, at least five percent (5%) of the voting interest or class of any outstanding Equity Participation; and (d) any Person directly or indirectly controlling, controlled by or under common control with any of the Persons referred to in subclause "(a)" or "(b)" above.

"Release" has the meaning set forth in Section 3.12(a)(iii).

"Representative Losses" has the meaning set forth in Section 9.4(f).

"Required Stockholder Vote" has the meaning set forth in Section 3.2(a).

"Safety Notices" has the meaning set forth in Section 3.19(g).

"Sales Milestone Payment" has the meaning set forth in Section 8.2(a).

"Sales Threshold" has the meaning set forth in Section 8.2(a).

"SEC" means the United States Securities and Exchange Commission.

"Second Testing Date" means the last day of the fourth Reimbursement Year.

"Second Testing Payment Date" has the meaning set forth in Section 8.2(c)(i).

"Second Testing Sales Thresholds" has the meaning set forth in Section 8.2(c).

"Securities Act" means the Securities Act of 1933, as amended.

"Seller Party Indemnitees" has the meaning set forth in Section 9.2(b).

"Series A Preference Amount" means the aggregate amount required to be paid to the holders of Series A Preferred Stock, as of the Effective Time, pursuant to Article IV, Section B.2 of the Charter.

"Series A Preference Per Share Amount" means an amount, in U.S. dollars, equal to (a) the Series A Preference Amount, divided by (b) the number of shares of Series A Preferred Stock outstanding as of immediately prior to the Effective Time, rounded to the nearest cent, as set forth in the Payout Schedule.

"Series A Preferred Stock" means shares of the Company's Series A Preferred Stock, par value $0.00001 per share.

"Series B Preference Amount" means the aggregate amount required to be paid to the holders of Series B Preferred Stock, as of the Effective Time, pursuant to Article IV, Section B.2 of the Charter.

"Series B Preference Per Share Amount" means an amount, in U.S. dollars, equal to (a) the Series B Preference Amount, divided by (b) the number of shares of Series B Preferred Stock outstanding as of immediately prior to the Effective Time, rounded to the nearest cent, as set forth in the Payout Schedule.

"Series B Preferred Stock" means shares of the Company's Series B Preferred Stock, par value $0.00001 per share.

"Series C Preference Amount" means the aggregate amount required to be paid to the holders of Series C Preferred Stock, as of the Effective Time, pursuant to Article IV, Section B.2 of the Charter.

"Series C Preference Per Share Amount" means an amount, in U.S. dollars, equal to (a) the Series C Preference Amount, divided by (b) the number of shares of Series C Preferred Stock outstanding as of immediately prior to the Effective Time, rounded to the nearest cent, as set forth in the Payout Schedule.

"Series C Preferred Stock" means shares of the Company's Series C Preferred Stock, par value $0.00001 per share.

"Software" means software (including firmware and other software embedded in hardware devices), software code (including source code and executable or object code), subroutines, interfaces, including application programming interfaces, and algorithms.

"Stockholders' Agent" has the meaning set forth in the Preamble.

"Stockholders' Written Consent" has the meaning set forth in Recital E.

"Straddle Period" has the meaning set forth in Section 5.4(b).

"Subsidiary" means any entity, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms voting power to elect a majority of the board of directors or other Persons performing similar functions is directly or indirectly owned or controlled by such party or by one or more of its respective Subsidiaries.

"Survival Termination Date" means the date that is eighteen (18) months following the Closing Date.

"Surviving Corporation" has the meaning set forth in Section 2.1.

"Takeover Statute" has the meaning set forth in Section 3.18.

"Tax" or "Tax(es)" has the meaning set forth in Section 3.13(a).

"Tax Returns" has the meaning set forth in Section 3.13(b).

"Tierney Consulting Agreement" has the meaning set forth in Recital D.

"Third Party" means any Person other than Parent, Merger Sub, any Affiliate of Parent or Merger Sub, the Company and the Stockholders' Agent.

"Third Party Claim" has the meaning set forth in Section 9.6.

"Third Party IP Rights" has the meaning set forth in Section 3.8(a)(viii).

"Third Testing Date" means the last day of the fifth Reimbursement Year.

"Third Testing Sales Milestone Payment" has the meaning set forth in Section 8.2(e).

"Third Testing Sales Threshold" has the meaning set forth in Section 8.2(e).

"Trademark Rights" has the meaning set forth in Section 3.8(a)(ix).

"Trade Secret Rights" has the meaning set forth in Section 3.8(a)(v).

"Transfer Taxes" means sales, use, value added, transfer, documentary, recording, stock transfer and similar Taxes and fees, and any deficiency, interest or penalty asserted with respect thereto.

"Transmittal Letter" has the meaning set forth in Section 2.7(c).

"Transmittal Letter Record Date" has the meaning set forth in Section 2.7(c).

"Unexpected Adverse Event" means, as that term is defined in 21 C.F.R. § 312.32, any adverse event that is not listed in, or the specificity or severity of which is not consistent with, the current investigator brochure or applicable investigational plan, and any adverse event or suspected adverse reaction that is mentioned in the investigator brochure as occurring with a class of drugs or as anticipated from the pharmacological properties of the drug, but is not specifically mentioned as occurring with the particular drug under investigation. Unexpected Adverse Event also includes "unexpected serious adverse reactions" as defined in 21 C.F.R. § 312.32.

"United States" or "U.S." means the United States of America, including its territories and possessions.

"USPTO" has the meaning set forth in Section 3.8(f).

"Valid Claim" means a claim of an issued Patent Right within the Company Patents that has not been abandoned, expired, or been held invalid or unenforceable by a court of competent jurisdiction in a final and non-appealable judgment, or a claim under any application for a Patent Right within the Company Patents that has been pending for five (5) years or less from the date of the first substantive office action with respect to such claim.

"Voting Debt" has the meaning set forth in Section 3.4(a).

"WARN Act" has the meaning set forth in Section 3.14(h).

"Warrant" means any outstanding warrant to purchase Company Capital Stock, all of which are listed in Section 3.4(a) of the Company Disclosure Letter.

"Warrant Surrender Agreement" has the meaning set forth in Section 2.12(b).

"Working Capital" means (without duplication) the sum of the net working capital of the Company as determined in accordance with GAAP as of 12:00 A.M. (Eastern time) on the Closing Date, excluding Estimated Closing Cash, Estimated Closing Debt, and Estimated Unpaid Company Transaction Expenses. In the event the Closing does not occur on the last day of a month, then each item included in the calculation of Working Capital shall be prorated to the extent applicable as of the Closing Date by multiplying the amount of each such item for the full calendar month by a fraction, the numerator of which is the number of days elapsed from and including the first day of the month in which the Closing Date occurs to but excluding the Closing Date, and the denominator of which is the total number of days in such month, provided that to the extent items may be determined on a daily basis, such amounts will be allocated on a daily basis.

ARTICLE II
THE MERGER

2.1 The Merger. At the Effective Time and upon the terms and subject to the conditions set forth in this Agreement, and pursuant to the applicable provisions of Delaware Law, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation in the Merger (the "Surviving Corporation").

2.2 Closing; Effective Time. The consummation of the Merger (the "Closing") shall take place as soon as practicable, but no later than one (1) Business Day, after the satisfaction or waiver of the last of the conditions set forth in Article VI to be satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing), or at such other time as the Parties agree (the actual date on which the Closing takes place being the "Closing Date"). The Closing shall take place at the offices of Hogan Lovells US LLP, 1735 Market Street, 23rd Floor, Philadelphia, PA 19103, or at such other location as the Parties agree. In connection with the Closing, Parent and the Company shall cause the Merger to be made effective by filing a Certificate of Merger in the form attached hereto as Exhibit F (the "Certificate of Merger") with the Secretary of State of the State of Delaware in accordance with the relevant provisions of Delaware Law (the effective time of the Merger as stated in such filing being the "Effective Time").

2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of Delaware Law.

2.4 Certificate of Incorporation; Bylaws. Unless otherwise agreed to by Parent and the Company prior to the Closing, at the Effective Time:

(a) the certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided by Delaware Law and such certificate of incorporation; and

(b) the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation until thereafter amended.

2.5 Directors and Officers. At the Effective Time, the directors and officers of Merger Sub immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation, to serve until their respective successors are duly elected or appointed and qualified or until their respective earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

2.6 Effect on Capital Stock.

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company, any Company Securityholders or the Stockholders' Agent:

(i) any shares of Company Common Stock then held by the Company (or held in the Company's treasury) shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(ii) each share of the common stock, $0.001 par value per share, of Merger Sub then outstanding shall be converted into one share of common stock of the Surviving Corporation; and

(iii) each share of Company Capital Stock shall be cancelled in exchange for the right to receive a portion of the Merger Consideration, as and when payable in accordance with the terms of this Agreement, which payment shall be allocated in accordance with the Payout Schedule.

(b) If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of Company Capital Stock, or securities convertible into, exchangeable into or exercisable for shares of Company Capital Stock, respectively, shall occur as a result of any reclassification, recapitalization, stock split (including a reverse stock split) or subdivision or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, merger or other similar transaction, the Merger Consideration shall be equitably adjusted, if necessary and without duplication, to reflect such change; *provided*, that nothing in this Section 2.6 shall be construed to permit the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

2.7 Parent to Provide Estimated Closing Merger Consideration; Surrender and Exchange of Certificates; Escrow Amount.

(a) Notwithstanding anything in this Agreement to the contrary, at the Closing, neither Parent nor Merger Sub shall be required to pay any amounts in excess of the Estimated Closing Merger Consideration.

(b) At or prior to the Effective Time, Parent shall deposit or shall cause to be deposited with the Payments Administrator, for the benefit of the Company Securityholders, an amount in cash equal to the Estimated Closing Merger Consideration. From and after the Effective Time, the Payments Administrator shall act as the agent of Parent and the Surviving Corporation in effecting any amounts to be paid under this Agreement and the exchange of the Certificates.

(c) The Payments Administrator shall mail or deliver or cause to be mailed or delivered, no fewer than five (5) days prior to the anticipated Effective Time or on such other date as the Company and Parent shall mutually agree (the "Mailing Date"), to each holder of record of a stock certificate or certificates (the "Certificates") that represented outstanding shares of Company Capital Stock, as of a record date no less than ten (10) days prior to the Mailing Date (the "Transmittal Letter Record Date") a (i) letter of transmittal in the form attached hereto as Exhibit G (the "Transmittal Letter"), which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Payments Administrator and shall contain instructions for use in effecting the surrender of the Certificates in exchange for the payment of the applicable portion of the Estimated Closing Merger Consideration therefor (and which Transmittal Letter shall include a consent to the appointment and authority of the Stockholders' Agent as set forth herein and an agreement to be bound by the escrow and indemnification provisions hereof) and (ii) any IRS tax forms reasonably requested by Parent. As soon as practicable following the Effective Time, the Payments Administrator shall mail or deliver or cause to be mailed or delivered a Transmittal Letter to each holder of record of a Certificate that represented outstanding shares of Company Capital Stock as of immediately prior to the Effective Time who was not a holder of record as of the Transmittal Letter Record Date. Promptly upon the later of (i) the Effective Time and (ii) the surrender of a Certificate to the Payments Administrator, together with a Transmittal Letter, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to the instructions thereto, the holder of such Certificate shall be entitled to receive (and Parent or the Surviving Corporation shall cause the Payments Administrator to distribute to such holder) in exchange therefor payment by check or, at the election of such holder and for a processing fee not to exceed $25.00 per wire transfer to be deducted from such payment, by wire transfer, immediately available funds of the cash amount equal to the applicable Estimated Closing Merger Consideration such holder has the right to receive pursuant to Section 2.6, after giving effect to any required withholding Taxes, and the Certificate so surrendered shall forthwith be cancelled. Parent and the Surviving Corporation shall be entitled to rely entirely on the information contained in the Payout Schedule and any transmittal materials delivered hereunder for purposes of satisfying Parent's and the Surviving Corporation's obligation to deliver the Merger Consideration hereunder.

(d) The Payments Administrator shall make payments to the holders of Company Options who have executed and delivered to the Company an Option Surrender Agreement (as defined below) of the applicable Merger Consideration therefor after giving effect to any required withholding taxes, payable to each holder of Company Options all as set forth in the Payout Schedule. Parent and the Surviving Corporation shall be entitled to rely entirely on the information contained in the Payout Schedule for purposes of satisfying Parent's and the Surviving Corporation's obligation to deliver the Estimated Closing Merger Consideration, Excess Consideration, Milestone Consideration and any Earn-Out Consideration hereunder.

(e) The Payments Administrator shall make payments to the holders of Warrants who have executed and delivered to the Company a Warrant Surrender Agreement (as defined below) of the applicable Merger Consideration therefor after giving effect to any required withholding taxes, payable to each holder of Warrants all as set forth in the Payout Schedule. Parent and the Surviving Corporation shall be entitled to rely entirely on the information contained in the Payout Schedule for purposes of satisfying Parent's and the Surviving Corporation's obligation to deliver the Estimated Closing Merger Consideration, Excess Consideration, Milestone Consideration and any Earn-Out Consideration hereunder.

(f) On the Closing Date, promptly after the Effective Time, Parent shall pay to the Escrow Agent the Escrow Amount to be deposited into the Escrow Fund. The Escrow Amount (or any portion thereof) shall be distributed from the Escrow Fund to the Payments Administrator, Parent or the Parent Indemnitees, as applicable, at the times, and upon the terms and conditions, set forth in this Agreement and the Escrow Agreement. Within three (3) Business Days following the date that is eighteen (18) months after the Effective Time, Parent and the Stockholders' Agent shall jointly instruct the Escrow Agent to deliver the applicable portion of the Escrow Amount (or any portion of the Escrow Amount then remaining) to the Payments Administrator for distribution to the Company Securityholders pursuant to the Payout Schedule; *provided*, that if there are any claims made by Parent hereunder that, subject to the provisions of Section 9.3, are pending on such date, the applicable portion of the Escrow Fund that is subject to any such claims shall not be released until such applicable claims are finally resolved and satisfied. The Parties agree that payments from the Escrow Fund to the Payments Administrator on behalf of the Company Securityholders will be treated for tax purposes as deferred payments of purchase price, except to the extent treated as payments of interest pursuant to Section 483 or Section 1274 of the Code.

(g) If any portion of the Merger Consideration is to be paid to a Person other than the Person in whose name the Certificate surrendered in exchange therefor is registered, it shall be a condition to such payment that (i) the Certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, (ii) the signatures on such Certificate or any related stock power, shall be properly guaranteed, and (iii) the Person requesting such exchange shall have paid any transfer or other Taxes required by reason of such payment in a name other than the registered holder of the Certificate surrendered or established to the satisfaction of Parent, or any agent designated by Parent, that such Tax has been paid or is not applicable.

(h) The Parties understand and agree that (i) the contingent rights to receive any Contingent Consideration will not be represented by any form of certificate, are not transferable, except by operation of Applicable Law relating to descent and distribution, divorce and community

property, and do not constitute an equity or ownership interest in Parent or the Surviving Corporation, (ii) no Company Securityholder shall have any rights as a security holder of the Surviving Corporation or Parent as a result of such Company Securityholder's contingent right to receive any Contingent Consideration hereunder and (iii) no interest is payable with respect to any Contingent Consideration (except in accordance with Article VIII).

(i) Notwithstanding anything to the contrary in this Agreement, none of the Stockholders' Agent, the Payments Administrator, Parent, Merger Sub or the Surviving Corporation (or any Affiliate thereof) shall be liable to a holder of a Certificate for any amount delivered to a public official pursuant to any applicable abandoned property, escheat or similar Applicable Law.

(j) Notwithstanding anything to the contrary in this Agreement, any of Parent, the Payments Administrator or the Surviving Corporation (pursuant to Parent's request) will be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Company Securityholder such amounts as Parent or the Payments Administrator determine in good faith are required to be deducted and withheld with respect to the making of such payment under the Code, or any provision of Applicable Laws relating to Taxes. Such withheld amounts will be treated for all purposes of this Agreement as having been paid to the Company Securityholders in respect of which such deduction and withholding was made by Parent, the Stockholders' Agent or the Surviving Corporation provided such amounts are paid over to the applicable Governmental Entity.

2.8 No Further Ownership Rights in Company Stock. The right to receive the applicable consideration upon the surrender for exchange of Certificates in accordance with the terms of this Article II (including the contingent right to receive payment of the Milestone Consideration or Earn-Out Consideration, if any) shall be in full satisfaction of all rights pertaining to Company Capital Stock (including any rights to receive accumulated but undeclared dividends, if any). At the Effective Time, the stock transfer books of the Company shall be closed, and thereafter there shall be no further registration of transfers of shares of Company Capital Stock outstanding prior to the Effective Time on the records of the Surviving Corporation. From and after the Effective Time, the holders of Certificates representing ownership of shares of Company Capital Stock outstanding prior to the Effective Time shall cease to have any rights with respect to such shares of Company Capital Stock, as applicable, (including any rights to receive accumulated but undeclared dividends, if any) except as otherwise specifically provided for herein. If, after the Effective Time, Certificates are presented to Parent or the Surviving Corporation (or any Affiliate thereof) for any reason, they shall be cancelled and exchanged as provided in this Article II.

2.9 Lost, Stolen or Destroyed Certificates. In the event any Certificates representing Company Capital Stock shall have been lost, stolen or destroyed, the Payments Administrator shall pay in exchange for such lost, stolen or destroyed Certificates, upon the making of an acceptable affidavit of that fact by the holder thereof and the delivery of such other documents reasonably requested by the Payments Administrator, the applicable Estimated Closing Merger Consideration; *provided*, *however,* that Parent may, in its sole discretion and as a condition precedent to the payment thereof, require the owner of such lost, stolen or destroyed Certificates to execute and deliver an indemnity agreement with respect to such Certificate in a form reasonably acceptable to Parent.

2.10 Dissenting Shares. Notwithstanding any provision of this Agreement to the contrary, any share of Company Capital Stock that is issued and outstanding immediately prior to the Effective Time and which is held by a Company Stockholder who has not consented to the adoption of this Agreement (such shares being referred to collectively as "Dissenting Shares," and such stockholder being a "Dissenting Stockholder") shall not be converted into a right to receive the consideration to which the holder of such share would be entitled pursuant to Section 2.6, but rather shall be converted into the right to receive only such consideration as may be determined to be due with respect to such Dissenting Share pursuant to Section 262 of Delaware Law (the "Appraisal Rights Statute"). In accordance with and in satisfaction of the requirements of Sections 228 and 262 of Delaware Law, the Surviving Corporation covenants and agrees to cause the notice required pursuant to Section 262(d)(2) of Delaware Law to be mailed no later than ten (10) Business Days following the Effective Date to each Company Stockholder who has not previously executed the Stockholders' Written Consent and to provide any additional notice or other information to the Company Stockholders as may be required by Delaware Law or the Company Organizational Documents. Notwithstanding the foregoing, if any Dissenting Stockholder fails to perfect such stockholder's appraisal rights under the Appraisal Rights Statute, or otherwise waives, withdraws or loses such rights with respect to any Dissenting Shares, or in the event that a court of competent jurisdiction shall determine that such stockholder is not entitled to relief provided under the Appraisal Rights Statute, such Dissenting Shares shall thereupon automatically be converted into and represent only the right, as of the Effective Time, to receive the applicable amounts provided in Section 2.6, without interest thereon, pursuant to the exchange procedures set forth in Section 2.6, and shall not thereafter be deemed to be Dissenting Shares.

2.11 Taking of Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Article II and to vest the Surviving Corporation with full right, title and possession to all Assets, rights, privileges, powers and franchises of the Company and Merger Sub, Parent and the Surviving Corporation are fully authorized in their respective names to take, and will take, all such lawful and necessary or desirable action, so long as such action is not inconsistent with this Agreement.

2.12 Treatment of Company Options and Warrants. The Company and the board of directors of the Company (or a duly authorized committee or subcommittee thereof) shall take all necessary and appropriate action so that the Company Options and the Warrants shall be treated as provided in this Section 2.12.

(a) Company Options. All Company Options (or portion thereof) that are outstanding as of immediately prior to the Effective Time shall remain outstanding after the Effective Time; provided that, if any holder of a Company Option (or portion thereof) that is outstanding as of immediately prior to the Effective Time executes and delivers an option surrender agreement in the form attached as Exhibit H (an "Option Surrender Agreement") at or prior to the Effective Time, each such Company Option held by such holder and subject to such Option Surrender Agreement shall be cancelled, terminated and extinguished as of the Effective Time, and upon the cancellation thereof be converted into the right following the Effective Time to receive, when and if payment of Merger Consideration, if any, is required to be paid pursuant to this Agreement, an amount of consideration in accordance with the Payout Schedule. The Company Option Plan shall remain in effect after the Effective Time to the extent any Company Options

remain outstanding after the Effective Time. No Noncompliant Securityholder shall be entitled to receive any Merger Consideration, and the Merger Consideration that otherwise would have been payable to such Noncompliant Securityholders if such Noncompliant Securityholders had executed Option Surrender Agreements prior to the Effective Time shall be payable to the other Company Securityholders on a pro rata basis after excluding the Merger Consideration that the Noncompliant Securityholders would have otherwise been entitled to receive. At or prior to the Effective Time, the Company shall in good faith determine the amounts to be reallocated from a Noncompliant Securityholder pursuant to this Section 2.12(a) and provide an updated Payout Schedule to the Payments Administrator regarding the payment of such amounts.

(b) Warrants. Prior to the Effective Time and subject to the provisions of this Article II, Article IX and other applicable provisions in this Agreement, the Company shall cause each holder of an outstanding Warrant to execute and deliver a warrant surrender agreement in the form attached hereto as Exhibit I (the "Warrant Surrender Agreement") providing that each such outstanding Warrant shall, upon the terms and subject to the conditions set forth therein, be cancelled, terminated and extinguished as of the Effective Time, and upon the cancellation thereof be converted into the right following the Effective Time to receive, when and if a payment of Merger Consideration, if any, is required to be paid pursuant to this Agreement, an amount of consideration in accordance with the Payout Schedule.

2.13 Closing Deliveries by the Company.

(a) At or prior to the Closing, the Company shall deliver or cause to be delivered to Merger Sub and Parent:

(i) counterparts of the Escrow Agreement, duly executed by the Stockholders' Agent and the Escrow Agent;

(ii) payoff letters and such other documentation as Parent shall reasonably request in order to evidence that the Company has discharged and repaid in full or terminated all Indebtedness of the Company and any liens or other encumbrances related thereto;

(iii) a certificate executed on behalf of the Company by the Chief Executive Officer and Secretary of the Company certifying the satisfaction of the conditions set forth in Section 6.1(a) and (b) and Section 6.2(a), (b) and (f);

(iv) a certificate of the Secretary of the Company certifying the names and signatures of the officers of the Company authorized to sign this Agreement and the other documents to be delivered hereunder and thereunder;

(v) evidence in form and substance acceptable to Parent to the effect that the Necessary Consent has been obtained;

(vi) (A) a copy of the certificate of incorporation of the Company, as amended through the Effective Time certified by the Secretary of State of the State of Delaware; (B) a copy of the bylaws of the Company certified by an officer of the Company; (C) minutes or action by written consent in lieu of a meeting of the board of directors of the Company approving the Merger and the transactions related thereto certified by an officer of the Company; and (D) a copy of the Stockholders' Written Consent certified by an officer of the Company;

(vii) good standing certificates for the Company from the Secretary of State of the State of Delaware and from the Secretary of State in each other jurisdiction in which the properties owned or leased by the Company, or the operation of its business in such jurisdiction, requires the Company to qualify to do business as a foreign corporation, in each case dated as of a date not earlier than five (5) Business Days prior to the Closing Date and accompanied by bring-down confirmations of status dated as of the Closing Date;

(viii) a certificate of the Secretary of the Company certifying the results of any 280G Shareholder Vote;

(ix) a certificate from the Company, complying with Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c) and dated as of the Closing Date, certifying that the Company is not, and has not at any time during the period specified in Section 897(c)(1)(A)(ii) of the Code been, a United States real property holding corporation (within the meaning of Section 897(c)(2) of the Code) and that no interest in the Company is a United States real property interest (within the meaning of Section 897(c)(1) of the Code), and the Company shall further deliver to Parent a copy of the written notice with respect to such certification that the Company shall have provided to the Internal Revenue Service in accordance with the requirements of Treasury Regulations Section 1.897-2(h)(2);

(x) the Certificate of Merger, duly executed by the Company;

(xi) letters of resignation, effective as of the Effective Time, from each of the directors and officers of the Company designated by Parent prior to the Closing; and

(xii) a certificate signed by the Chief Executive Officer of the Company stating that the information set forth in the Payout Schedule delivered by the Company to Parent in accordance with Section 5.15 is true and correct in all respects;

(xiii) a Warrant Surrender Agreement duly executed by the Company and each holder of a Warrant that is outstanding as of immediately prior to the Effective Time;

(xiv) an Option Surrender Agreement duly executed by the Company and each holder of Company Options listed in Section 2.13(a)(xiv) of the Company Disclosure Letter; and

(xv) confidentiality agreements in form and substance reasonably acceptable to Parent, executed by each member of the Advisory Group;

(xvi) the Amendment to Notes, duly executed by the Company and the holders representing more than 50% of the aggregate outstanding principal amount of each series of the Convertible Debt converting such Convertible Debt into shares of Series C Preferred Stock; and

(xvii) the Charter, certified by the Secretary of State of the State of Delaware, evidencing conversion of the Convertible Debt into shares of Series C Preferred Stock.

2.14 Closing Deliveries by Parent and Merger Sub.

(a) At or prior to the Closing, Parent or Merger Sub shall deliver to the Payments Administrator the amount required to be deposited pursuant to Section 2.7(b).

(b) At or prior to the Closing, Parent or Merger Sub shall deliver to the Company:

(i) counterparts of the Escrow Agreement, duly executed by Parent and the Escrow Agent;

(ii) evidence of wire transfer to the Payments Administrator of the amount set forth in Section 2.7(b);

(iii) evidence of wire transfer to the Escrow Agent of the Escrow Amount;

(iv) a certificate of the Secretary or an Assistant Secretary of Parent certifying the names and signatures of the officers of Parent and Merger Sub authorized to sign this Agreement and the other documents to be delivered hereunder and thereunder; and

(v) a certificate executed on behalf of Parent by an authorized officer of Parent certifying the satisfaction of the conditions set forth in Section 6.3(a) and (b).

(c) At or prior to the Closing, Parent shall deliver or cause to be delivered the Escrow Amount to the Escrow Agent, in accordance with the Escrow Agreement and Section 2.7(f).

2.15 Purchase Price Adjustment.

(a) Prior to the Closing Date, the Company shall have delivered to Parent the Company's estimates, along with reasonable supporting detail thereof, of the Closing Debt (the "Estimated Closing Debt"), Closing Cash (the "Estimated Closing Cash"), unpaid Company Transaction Expenses ("Estimated Unpaid Company Transaction Expenses"), Working Capital as of the Closing Date (the "Estimated Working Capital") (including a reasonably detailed description of each component thereof) and, based upon such calculations, the difference between the Estimated Working Capital and the Baseline Working Capital, such estimates to be prepared in good faith and in accordance with GAAP.

(b) Promptly following the Closing Date, but in no event later than ninety (90) days after the Closing Date, Parent will prepare and submit to the Stockholders' Agent a statement (the "Closing Date Statement") setting forth in reasonable detail, Parent's calculation of the Closing Debt ("Proposed Closing Debt"), Closing Cash ("Proposed Closing Cash"), Closing Working Capital ("Proposed Final Working Capital") and unpaid Company Transaction Expenses ("Proposed Unpaid Company Transaction Expenses") and, based upon such calculations, the Closing Merger Consideration ("Proposed Closing Merger Consideration"), and any supporting documentation relevant to such calculations, which are to be prepared in good faith and in accordance with GAAP.

If the Stockholders' Agent disputes or objects to the calculation of any of the Proposed Closing Debt, Proposed Closing Cash, Proposed Final Working Capital or Proposed Unpaid Company Transaction Expenses, the Stockholders' Agent will notify Parent in writing (such notice being the "Objection Notice") of its disputes or objections no later than thirty (30) days after receipt of the Closing Date Statement and will set forth, in writing and in reasonable detail, the reasons for the Stockholders' Agent's objections. If the Stockholders' Agent fails to deliver an Objection Notice no later than thirty (30) days after receipt of the Closing Date Statement, the Company Securityholders will be deemed to have accepted the Proposed Closing Debt, Proposed Closing Cash, Proposed Final Working Capital and Proposed Unpaid Company Transaction Expenses as calculated by Parent, and such amounts shall be deemed to be final and binding for all purposes hereunder. If Parent does not prepare and timely deliver a Closing Date Statement as described in the first sentence of this Section 2.15(b), the Estimated Closing Debt, Estimated Closing Cash, Estimated Unpaid Company Transaction Expenses and Estimated Working Capital delivered at Closing shall become final and binding for all purposes hereunder. If the Stockholders' Agent delivers an Objection Notice no later than such thirty (30) day period, the Stockholders' Agent and Parent will endeavor in good faith to resolve any disputed matters no later than fifteen (15) Business Days after receipt by Parent of the Stockholders' Agent's Objection Notice. If the Stockholders' Agent and Parent are unable to resolve the disputed matters in accordance with the preceding sentence, the Stockholders' Agent and Parent will appoint the Neutral Auditor to resolve the matters in dispute in accordance with Section 2.15(c). The fees and expenses of the Neutral Auditor will be paid by the Stockholders' Agent (on behalf of the Company Securityholders), on the one hand, and by Parent, on the other hand, in the same proportion that the dollar amount of the disputed items that are not resolved in favor of Parent or the Stockholders' Agent, as applicable, bears to the total dollar amount of disputed items resolved by the Neutral Auditor. The Closing Debt, Closing Cash, Closing Working Capital and Unpaid Company Transaction Expenses as of the Closing Date, as finally determined pursuant to this Section 2.15(b) or Section 2.15(c) are referred to herein as the "Final Closing Debt," "Final Closing Cash," "Final Working Capital," and "Final Unpaid Company Transaction Expenses," respectively.

(c) If the disputed matters referenced in Section 2.15(b) are submitted to the Neutral Auditor in accordance with Section 2.15(b), the provisions of this Section 2.15(c) shall apply. Each Party agrees to promptly execute a reasonable engagement letter, if requested to do so by the Neutral Auditor. The Neutral Auditor shall be provided with such information and records, which may include on-site access and access to personnel, relating to such dispute as it may reasonably request and Parent and the Stockholders' Agent, and their respective representatives, shall cooperate fully with the Neutral Auditor. Parent and the Stockholders' Agent shall be entitled to submit presentations and other documentation to support their respective calculations of each such disputed item to the Neutral Auditor and shall instruct the Neutral Auditor to, and the Neutral Auditor shall, make its determination based solely on information and records provided to the Neutral Auditor in accordance with this Section 2.15(c) and on such documentation and presentations submitted by the Stockholders' Agent and Parent in accordance with the guidelines and procedures set forth in this Agreement and in the engagement letter referred to in this Section 2.15(c) and not on the basis of an independent review. The Neutral Auditor shall be directed to resolve such disputes, determine such values, calculate such disputed items as of the Closing Date (in accordance with this Section 2.15(c)) and deliver a written determination of such disputed items as of the Closing Date within thirty (30) days after being retained as provided in this Section 2.15(c). With respect to each submitted disputed item, the Neutral Auditor's determination shall be within

the range of values assigned to such disputed item by Parent and the Stockholders' Agent. Any finding by the Neutral Auditor shall be: (i) a reasoned award stating in reasonable detail the findings of fact on which it is based; (ii) final, non-appealable and binding upon the Stockholders' Agent, the Company Securityholders and Parent, and their respective Affiliates, representatives, successors and assigns; and (iii) accompanied by a certificate from the Neutral Auditor certifying that it reached such findings in accordance with the provisions of this Section 2.15(c). The Neutral Auditor's written determination of the Final Closing Debt, Final Closing Cash, Final Working Capital and Final Unpaid Company Transaction Expenses and, based on such amount, the Closing Merger Consideration, as of the Closing Date shall include a schedule setting forth all material calculations used in arriving at such determination and shall be based solely on information provided to the Neutral Auditor by Parent and the Stockholders' Agent in accordance herewith.

(d) If the Estimated Closing Merger Consideration is more than the Closing Merger Consideration, as finally determined in accordance with Sections 2.15(b) or 2.15(c), then the amount of the difference between the Estimated Closing Merger Consideration and the Closing Merger Consideration shall be paid to Parent from the Escrow Fund. Any amounts payable to Parent pursuant to this Section 2.15(d) will be made not later than five (5) Business Days after the determination of the Closing Merger Consideration by wire transfer of immediately available funds to an account designated in advance in writing by Parent. If the Closing Merger Consideration is greater than the Estimated Closing Merger Consideration, the amount of the difference between the Closing Merger Consideration and the Estimated Closing Merger Consideration (the "Excess Consideration") shall be paid by Parent to the Payments Administrator for payment to the Company Securityholders in accordance with the Payout Schedule not later than five (5) Business Days after the determination of the Closing Merger Consideration.

(e) Following the Effective Time, the Stockholders' Agent and Parent shall cooperate and provide each other and, if applicable, the Neutral Auditor, and their respective representatives, reasonable assistance and access to such books, records and employees as are reasonably requested in connection with the matters addressed in this Section 2.15.

2.16 Withholding of Tax. Notwithstanding anything to the contrary in this Agreement, Parent and the Payments Administrator will be entitled to deduct and withhold from the consideration otherwise payable to the Company Securityholders pursuant to this Agreement such amounts as Parent and Payments Administrator mutually determine in good faith are required to be deducted and withheld with respect to the making of such payment under the Code, or any provision of state, local or foreign Applicable Laws relating to Taxes. Such withheld amounts will be treated for all purposes of this Agreement as having been paid by Parent to the Company Securityholders to the extent such amounts are timely paid over to the appropriate governmental authority.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent, except as otherwise provided herein, the statements contained in this Article III are true and correct as of the date hereof and as of the Closing (unless the particular statement speaks expressly as of a particular date, in which case it is true and correct only as of such date):

3.1 Organization, Standing and Power. The Company is a corporation duly incorporated, validly existing and in good standing, if applicable, under the Applicable Laws of the jurisdiction of its incorporation. The Company has the requisite corporate power and authority to own, lease and operate its Assets and to carry on its business as now being conducted (but not taking into account the transactions contemplated by this Agreement) (collectively, the "Current Company Business"). The Company is duly qualified to do business, and is in good standing, if applicable, in each jurisdiction where the operation of the Current Company Business by the Company requires such qualification, except where the failure to be so qualified or in good standing, individually or in the aggregate, would not reasonably be expected to cause a Company Material Adverse Effect. The Company has delivered, or made available, to Parent or its advisors true and correct copies of the certificate of incorporation and bylaws of the Company as in effect as of the date of this Agreement. The Company is not in violation of any of the provisions of the Company Organizational Documents. The Company has no Subsidiaries. The Company does not directly or indirectly own any equity or similar interest in, or any interest convertible or exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, joint venture or other business association or entity.

3.2 Authority.

(a) The Company has all requisite corporate power and authority to enter into this Agreement and, subject to the receipt of the Required Stockholder Vote, to consummate the Merger. The affirmative vote or consent of (i) a majority of the issued and outstanding shares of Company Common Stock, Series A Preferred Stock (on an as-converted to Company Common Stock basis) and Series B Preferred Stock (on an as-converted to Company Common Stock basis), voting together as a single class, and (ii) seventy-three percent (73%) of the issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock, voting together as a single class, outstanding on the record date chosen for purposes of determining the stockholders of the Company entitled to vote on the approval of this Agreement is the only vote of the holders of any Company Capital Stock necessary under Delaware Law to approve this Agreement and the Merger (the "Required Stockholder Vote"), and is the only vote of the holders of any Company Capital Stock necessary to consummate the Merger and the other transactions contemplated hereby (other than the filing and recordation of the Certificate of Merger and such other documents as required by Delaware Law). The Board of Directors of the Company has duly (i) declared that this Agreement, the Merger and the other transactions contemplated by this Agreement are advisable, fair to and in the best interests of the Company and its stockholders, (ii) approved this Agreement in accordance with the provisions of Delaware Law, (iii) directed that this Agreement and the Merger be submitted to the stockholders of the Company for their adoption and approval by written consent, and (iv) resolved to recommend that the stockholders of the Company vote in favor of the adoption of this Agreement and the approval of the Merger and the other transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the Company and, assuming that this Agreement constitutes a valid and binding obligation of the other Parties, this Agreement constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar Applicable Laws affecting or relating to creditors' rights generally and general principles of equity, regardless of whether asserted in a proceeding in equity or at law.

(b) The execution and delivery of this Agreement by the Company does not constitute, and the consummation by the Company of the transactions contemplated hereby will not result in, a termination, or breach or violation by the Company of, or a default by the Company under (with or without notice or lapse of time, or both), or result in a lien (except for Permitted Encumbrances) or any loss of any right of the Company under, or require a consent or waiver under (i) any provision of the Company Organizational Documents (ii) any Contract, (iii) any Applicable Law applicable to the Company or any of its Assets, except in the case of clauses (ii) or (iii) where such termination, breach, violation or default, individually or in the aggregate, would not reasonably be expected to cause a Company Material Adverse Effect. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required to be obtained or made by the Company at or prior to the Effective Time in order for the Company to execute and deliver this Agreement or to consummate the Merger, except for: (x) the filing of the Certificate of Merger as provided in Section 2.2 and (y) such consent, approval, order or authorization of, or registration, declaration or filing that would not, individually or in the aggregate, reasonably be expected to be material to the Company. The filing set forth in (x) is referred to herein as the "Necessary Consent."

(c) The Company is not subject to the provisions of Section 2115 of the California Corporations Code.

3.3 Financial Statements; Bank Accounts; Books and Records.

(a) The Company has delivered to Parent or its advisors (i) the audited balance sheets and statements of operations, stockholders' equity and cash flows of the Company as of and for the fiscal years ended December 31, 2015 and December 31, 2016 and (ii) (A) the unaudited balance sheet of the Company as of December 31, 2017 (the "Company Balance Sheet") and (B) the unaudited statement of operations of the Company for the twelve-month period ended December 31, 2017 (collectively, the "Company Financial Statements"). The Company Financial Statements have been prepared in accordance with GAAP and fairly present, in all material respects, the financial condition of the Company as of the dates indicated therein and the results of operations and cash flows of the Company for the periods indicated therein, subject, in the case of the interim financial statements, to normal year-end adjustments, which adjustments will not be material in amount or significance. The Company Financial Statements were prepared in accordance with the books of account and other financial records of the Company, which books of account and other financial records are accurate, complete and current in all material respects.

(b) The Company maintains adequate internal controls for a company of its size and sophistication, which internal controls are reasonably designed to ensure that (i) transactions are executed with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of the Company Financial Statements in accordance with GAAP and to maintain accountability for the assets of the Company; and (iii) access to the assets of the Company is permitted only in accordance with management's general or specific authorization. To the Company's knowledge, there have been no instances of fraud, whether or not material, that have occurred since January 1, 2015. None of the Company nor any director or officer, nor, to the Company's knowledge, any Employee, accountant or auditor of the Company, has received or otherwise had or obtained knowledge of any complaint, allegation, assertion or claim of impropriety, irregularity or misconduct, whether written or oral, regarding the accounting or auditing practices and procedures of the Company or its internal accounting controls.

(c) Section 3.3(c) of the Company Disclosure Letter sets forth the following: (i) a true and complete list of the names and locations of all banks, trust companies, securities brokers and other financial institutions at which the Company has an account or a safe deposit box or maintains a banking, custodial, trading or other similar relationship; and (ii) a true and complete list and description of each such account, box or relationship, indicating in each case the number of each account and the respective officers, Employees, agents or other similar representatives of the Company having signatory power with respect thereto.

(d) Except as set forth on Section 3.3(d) of the Company Disclosure Letter, as of the date of this Agreement, (i) there is no Indebtedness and (ii) there are no undrawn letters of credit for which the Company is an account party. Section 3.3(d) of the Company Disclosure Letter sets forth, as of the close of business on the Business Day immediately preceding the date hereof, the amount of Cash.

(e) Section 3.3(e) of the Company Disclosure Letter lists, and the Company has delivered to Parent copies of the documentation creating or governing, all securitization transactions and "off-balance sheet arrangements" (as defined in Item 303(a)(4) of Regulation S-K of the SEC) effected by the Company. Section 3.3(e) of the Company Disclosure Letter lists all non-audit services performed by the Company's independent registered public accounting firm for the Company.

(f) The Company has not extended or maintained credit, arranged for the extension of credit, modified or renewed an extension of credit, in the form of a personal loan or otherwise, to or for any director or executive officer of the Company. Section 3.3(f) of the Company Disclosure Letter identifies any loan or extension of credit maintained by the Company to which the second sentence of Section 13(k)(1) of the Exchange Act would apply.

(g) Frank, Rimerman + Co. LLP, the Company's current independent registered public accounting firm, is and has been at all times since its engagement by the Company in 2014 (i) "independent" with respect to the Company within the meaning of Regulation S-X and (ii) in compliance in all material respects with subsections (g) through (l) of Section 10A of the Exchange Act (to the extent applicable) and the related rules of the SEC and the Public Company Accounting Oversight Board.

(h) The minute books and other similar records of the Company contain complete and accurate records of all actions taken at any meetings of the Company Stockholders, board of directors or any committee thereof and of all written consents executed in lieu of the holding of any such meeting. The books and records of the Company accurately reflect in all material respects the assets, liabilities, business, financial condition and results of operations of the Company.

3.4 Capitalization; Shares and Stockholder Information.

(a) Capitalization. The authorized capital stock of the Company consists of 30,298,100 shares, comprising (i) a class of 2,096,699 shares of Company Common Stock and (ii) a class of 28,201,401 shares of preferred stock, par value $0.00001 per share ("Preferred Stock"), of which (A) 403,301 shares of Preferred Stock have been designated as Series A Preferred Stock, (B) 393,734 shares of Preferred Stock have been designated as Series B Preferred Stock and (C) 27,404,366 shares of Preferred Stock have been designated as Series C Preferred Stock. As of the date hereof, 500,848 shares of Company Common Stock were issued and outstanding, 401,401 shares of Series A Preferred Stock were issued and outstanding, 337,779 shares of Series B Preferred Stock were issued and outstanding and 27,404,365.8 shares of Series C Preferred Stock were issued and outstanding. All outstanding shares of Company Common Stock and Preferred Stock (i) are duly authorized, validly issued, fully paid and non-assessable, (ii) are free of any liens or encumbrances created by the Company, and (iii) were not issued in violation of any preemptive rights or rights of first refusal created by statute, the Company Organizational Documents or any agreement to which the Company is a party or by which it is bound. As of the date of this Agreement, there were 170,291 shares of Company Common Stock reserved for issuance under the Company Option Plan, of which 140,175 shares of Company Common Stock were subject to outstanding Company Options and 29,668 shares of Company Common Stock were reserved for future option grants. As of the date of this Agreement, there were 361,412 shares of Company Common Stock reserved for issuance under the Warrants. Except as set forth in this Section 3.4, as of the date hereof, there are no options, warrants, calls, rights, commitments or agreements that are outstanding to which the Company is a party or by which it is bound, obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of Company Capital Stock or obligating the Company to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any option, warrant, call, right, commitment or agreement regarding shares of Company Capital Stock. There are no other contracts, commitments or agreements relating to the voting, purchase or sale of the Company's capital stock (i) between or among the Company and any of its stockholders, and (ii) to the Company's knowledge, between or among any of the Company's stockholders. The Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the Company Stockholders on any matter ("Voting Debt"). As of the date hereof, there are no declared and unpaid dividends on any share of Company Capital Stock.

(b) Shares and Stockholder Information. Section 3.4(b) of the Company Disclosure Letter sets forth, as of the date hereof: (i) the name and the true and correct number of shares of Company Capital Stock that each current stockholder of the Company holds of record; and (ii) to the Company's knowledge, the address of such stockholder. Section 3.4(b) of the Company Disclosure Letter contains a correct and complete list of each outstanding Company Option, including the holder and his or her address, the Company Option Plan under which it was granted, date of grant, exercise price, the number of shares subject thereto and the vesting schedule. Section 3.4(b) of the Company Disclosure Letter contains a correct and complete list of each outstanding Warrant, including the holder and his, her or its address, date of grant, purchase price and number of shares subject thereto.

(c) Company Options. The Company has provided to Parent a true and complete copy of the Company Option Plan and all Contracts evidencing Company Options. The Company Option Plan was approved by the Company Stockholders. No Company Option is exercisable for any class or series of Company Capital Stock other than Company Common Stock. At the time of issuance, the exercise price of each Company Option was not less than the fair market value of a share of Company Common Stock as of the date of grant of such Company Option. All grants of Company Options were validly issued and properly approved by the Company's board of directors (or a duly authorized committee or subcommittee thereof) in compliance with all Applicable Laws and recorded on the Company Financial Statements in accordance with GAAP, and all such grants were properly made on the applicable grant dates as reflected in the Company Financial Statement. As of the Effective Time, the Company Options set forth in Section 3.4(c) of the Company Disclosure Letter shall be cancelled or otherwise terminated in accordance with the Option Surrender Agreement applicable to such Company Options and no former holder of such Company Options will have any rights with respect to such Company Options other than the right to receive the payments as specified in Section 2.12(a).

(d) Warrants. The Company has provided to Parent a true and complete copy of all Contracts pursuant to which any Warrant is outstanding. As of the Effective Time, all Warrants shall be cancelled or otherwise terminated in accordance with the Warrant Surrender Agreement or otherwise and no Person will have any rights with respect to any Warrant other than the right to receive the payments specified in Section 2.12(b).

(e) Convertible Debt. The Company has provided to Parent a true and complete copy of all Contracts pursuant to which any Convertible Debt was outstanding immediately prior to the Effective Time, including any Notes relating thereto. Section 2.13(a)(ii) of the Company Disclosure Letter contains a correct and complete list of all convertible debt of the Company outstanding prior to the Effective Time. As of the Closing, all Convertible Debt has been converted into shares of Series C Preferred Stock in accordance with the Amendment to Notes and no Person shall have any rights with respect to any Convertible Debt.

(f) Stockholder Rights. Except as set forth in Section 3.4(f) of the Company Disclosure Letter, there are no Contracts between the Company and any holder of its securities, or, to the Company's knowledge, among any holders of its securities, relating to the sale or transfer (including agreements relating to rights of first refusal, co sale rights or "drag along" rights), registration under the Securities Act or voting, of any Company Capital Stock. The transfer restrictions (and any related purchase rights) in any such disclosed agreement or any other applicable agreement have been waived by the Company and the requisite majorities of Preferred Stock and Company Common Stock required to approve such waivers in connection with the Merger, this Agreement and the other transactions contemplated hereby and true and complete copies of such waivers have been provided to Parent.

(g) Payout Schedule. The Payout Schedule sets forth a true, correct and complete summary of the allocation of the amounts payable to the Company Securityholders pursuant to this Agreement, the Warrant Surrender Agreements and the Option Surrender Agreements. The allocation of payments set forth in the Payout Schedule complies with the terms of the Company Organizational Documents.

3.5 Absence of Certain Changes.

(a) Since November 30, 2017 (the "Company Balance Sheet Date") and through the date hereof, a Company Material Adverse Effect has not occurred.

(b) Since the Company Balance Sheet Date and through the date hereof, there has not been: (i) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of the Company's capital stock, (ii) any purchase, redemption or other acquisition by the Company of any of the Company's capital stock or any other securities of the Company or any options, warrants, calls or rights to acquire any such shares or other securities except for repurchases from Employees following their termination pursuant to the terms of their stock option or purchase agreements, (iii) any split, combination or reclassification of any of the Company Capital Stock, (iv) any material change by the Company in its accounting methods, principles or practices, except as required by GAAP, or (v) any material revaluation by the Company of any of its assets, including writing down the value of capitalized inventory or writing off notes or accounts receivable other than in the ordinary course of business.

3.6 Absence of Undisclosed Liabilities. Except as disclosed in the Company Financial Statements, the Company has no Liabilities, except for (i) Liabilities shown on the Company Balance Sheet, (ii) Liabilities which have arisen in the ordinary course of business since the Company Balance Sheet Date, (iii) Liabilities incurred pursuant to Contracts in effect as of the date hereof (other than as a result of any breach or nonperformance thereof), or (iv) Liabilities incurred in connection with this Agreement or the transactions contemplated hereby.

3.7 Litigation. Except as set forth in Section 3.7 of the Company Disclosure Letter, there are no, and since four (4) years prior to the date hereof, there have not been any Claims pending or, to the Company's knowledge, threatened against or affecting the Company or any of its officers or directors (or pending or, to the Company's knowledge, threatened against the Company or any of the officers, directors or Employees of the Company with respect to the business of the Company). The Company is not the subject of any Claim or any inquiry or investigation by a Governmental Entity or any Third Party. The Company is not subject to any judgment, order or decree of any court or other Governmental Entity. The Company has not threatened, initiated or taken any steps towards the commencement of any Claim against any Third Party.

3.8 Intellectual Property.

(a) For purposes of this Agreement:

(i) "IP Rights" means any and all intellectual property and all rights therein and thereto of any nature or kind, under Applicable Laws, including: (A) Copyrights; (B) Patent Rights; (C) Trademark Rights; (D) domain name registrations; (E) Trade Secret Rights and other protectable rights in and to other proprietary information and materials; (F) all rights in and to Software, databases, data compilations and data collections and data, including in personally identifiable information and pre-clinical, non-clinical and clinical trial data and all aggregated data, development tools, diagrams, formulae, methods, network configurations and architectures, processes, specifications, works of authorship and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of any of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries); (G)

moral rights and rights of publicity; (H) all rights and priorities afforded under Applicable Law with respect to any of the foregoing; (I) all rights to sue or recover and retain damages and costs and attorneys' fees for past, present and future Infringement of any of the foregoing; (J) all rights to income, royalties or payments in any form with respect to any of the foregoing; and (K) all other intellectual property and proprietary rights.

(ii) "Copyrights" means all works of authorship, mask works and any and all other copyrights and copyrightable works, and all applications, registrations, restorations, extensions, and renewals thereof, including all rights of authorship, use, publication, reproduction, distribution, performance, display, preparation of derivative works, transformation, and rights of ownership of copyrightable works and all rights to register and obtain renewals, restorations and extensions of registrations of any of the foregoing, and all rights existing with respect to any of the foregoing under Applicable Law.

(iii) "IP License" means any Contract to which the Company is a party and pursuant to which it or has obtained or granted or has the right to obtain or a requirement to grant any IP Rights, including any license or sublicense agreements (A) granting the Company rights to use IP Rights owned or held by any other Person, or (B) pursuant to which the Company grants rights to any other Person to use any Company Intellectual Property, but in all cases excluding (X) any Contract concerning IP Rights or technology that are generally available on commercially reasonable terms and requiring aggregate annual payments of less than $25,000, and (Y) non-disclosure and confidentiality Contracts in substantially the form provided to Parent or its counsel (containing no exceptions or exclusions from the scope of its coverage), in each case of (X) and (Y) which have been disclosed to Parent.

(iv) "Patent Rights" means all national, regional and international patents, including petty patents, design patents, utility models and patents, and certificates of invention, and applications for any of the foregoing, including all provisional applications, converted provisional applications, international (PCT) applications, substitutions, continuations, continuations-in-part, continuing prosecution applications, registrations, confirmations, divisions, renewals, reissues, re-examinations, extensions and supplementary protection certificates thereof, and any counterparts claiming priority therefrom or the benefit thereof under applicable intellectual property laws.

(v) "Trade Secret Rights" means any and all trade secrets, nonpublic know-how and show-how, and other confidential and proprietary information, including (in each case to the extent confidential and proprietary) business plans, schematics, algorithms, concepts, research and development information, data, product specifications, processes, records and other documentation outlining manufacturing and other processes, compounds, formulae, ideas, inventions, discoveries, drawings, prototypes, models, designs, Software and databases, and customer, patient, and supplier information and lists, and all rights existing with respect to any of the foregoing under Applicable Law.

(vi) "Company Intellectual Property" means all IP Rights that are owned, licensed, or Controlled by the Company, including the Company-Owned IP Rights and Third Party IP Rights.

(vii) "Company-Owned IP Rights" means all IP Rights owned exclusively by the Company or jointly owned by the Company and another Person or other Persons.

(viii) "Third Party IP Rights" means all IP Rights licensed to the Company by a Third Party pursuant to any IP License.

(ix) "Trademark Rights" means all trademarks, service marks, trade names logos, trade dress, corporate names, business symbols and other indications of origin or quality, whether registered or unregistered, and all registrations and applications therefor and all renewals of any of the foregoing, together with the goodwill associated any of with the foregoing, and all rights existing with respect to any of the foregoing under Applicable Law.

(b) Section 3.8(b) of the Company Disclosure Letter sets forth a complete and accurate list of all Patent Rights, all registered Trademark Rights (or Trademark Rights for which applications for registration have been filed), all registered Copyrights (or Copyrights for which applications for registration have been filed), and all domain name registrations, in each case owned or Controlled by the Company or any of its Affiliates immediately prior to the Closing (collectively, "Registered IP Rights"), setting forth in each case, (i) the jurisdictions in which such Registered IP Rights have been issued, or applications have been filed; (ii) all applicable registration, issuance, grant, application and serial numbers and dates; (iii) the nature of the Company's ownership interest or other rights (e.g., sole ownership, joint ownership or in-licensed); (iv) the listed registrant(s)/applicant(s) of record and all legal owner(s) thereof; (v) all filing, maintenance and other deadlines occurring within thirty (30) days of the date hereof; and (vi) all renewal and expiration dates of such Registered IP Rights that are issued or registered occurring within two (2) years of the date hereof. Section 3.8(b) of the Company Disclosure Letter additionally sets forth an accurate and complete list of all inventions owned or Controlled by the Company as of the date hereof for which an application for registration, filing, certification, grant or issuance is currently in preparation.

(c) The Company has good, valid, unexpired, and enforceable rights, title, and interest in and to all Company-Owned IP Rights, free and clear of all liens, and except as set forth in Section 3.8(c) of the Company Disclosure Letter, the Company-Owned IP Rights are solely and exclusively owned. The Company has not placed any liens on any other Company Intellectual Property and is not aware of any liens on such other Company Intellectual Property. None of the Company Intellectual Property owned by the Company or for which the Company has the right (excluding unexercised step-in rights) or responsibility to file, prosecute and maintain (such Company Intellectual Property, the "Company Portfolio IP"), and, to the Company's knowledge, none of the Company Intellectual Property used in the Current Company Business, is subject to any outstanding injunction, judgment, order, decree, ruling, charge, settlement or other disposition of any dispute that might reasonably be expected to limit or restrict (A) the use of such Company Intellectual Property or (B) the assignment or license thereof by the Company or its Affiliates. As of the date hereof, the Company has not received any written notice from any Third Party challenging or threatening to challenge the right, title or interest of the Company in, to or under any Company Intellectual Property, or the scope, validity, duration, legality, priority, registrability, or enforceability of the Company Intellectual Property. The Company has not received any written notice, nor to the Company's knowledge, has there been any threat, that the Company Intellectual

Property used in the Current Company Business is the subject of any litigation, revocation, interference, reissue, reexamination, opposition, concurrent use, cancellation, invalidity, inter partes review, post-grant review or other similar proceeding challenging or contesting the scope, inventorship, ownership, validity or enforceability of any such Company Intellectual Property and the Company does not have knowledge of any facts or circumstances that might reasonably be expected to serve as the basis of such a proceeding that would be likely to result in an adverse judgment in any such proceeding. The Company Intellectual Property with respect to the Lead Product and, to the Company's knowledge, the Company Intellectual Property with respect to the Other Products is, in each case, sufficient for the conduct of, and constitutes all of the IP Rights that are used in, or necessary for use in, the Current Company Business. Except as set forth in Section 3.8(c) of the Company Disclosure Letter, all Company Intellectual Property created or developed by an Employee or Contract Worker of the Company has assigned all of his or her rights to the Company pursuant to a written agreement that is fully compliant with Applicable Laws, a copy of which has been provided to Parent as of the date of this Agreement.

(d) Section 3.8(d) of the Company Disclosure Letter sets forth a complete and accurate list of all IP Licenses (except any agreements between the Company and an employee consisting only of a transfer of IP Rights to the Company). Complete and correct copies of all IP Licenses listed in Section 3.8(d) of the Company Disclosure Letter have been made available to Parent. The Company is in compliance in all material respects with all Contracts relating to any IP Rights, including all IP Licenses, and neither the Company nor, to the Company's knowledge, any other party to a IP License, is in material breach or material default of such IP License, and (B) no event has occurred that with notice or lapse of time would constitute a material breach or material default thereunder by the Company or to the Company's knowledge, any other party to such IP License, or would permit the modification or premature termination of such IP License by any other party thereto (except any agreements between the Company and an employee consisting only of a transfer of IP Rights to the Company).

(e) As of the date hereof, the Company has not received any written notice from any Third Party asserting a Claim or threatening to make a Claim which would adversely affect the rights of the Company, under any IP License. The Company has not received any written notice of breach or default under any IP License.

(f) All registration, maintenance and renewal fees and other fees for each item of Registered IP Rights have been made, and all documents, recordations, certificates and other material in connection with such Registered IP Rights have been filed with the relevant Governmental Entity in a timely manner for the purposes of registering, prosecuting, maintaining, enforcing, and/or perfecting such Registered IP Rights. All Registered IP Rights are (i) in good standing and subsisting (except as set forth in Section 3.8(d) of the Company Disclosure Letter), and (ii) are valid and enforceable (excluding applications for Patent Rights). To the Company's knowledge, there are no published Patent Rights, articles or other prior art references, or any other prior art or information, that would render invalid in whole or in part any granted Company Patent or any issued claim therein. With respect to the Company Patents, to the Company's knowledge, the Company and each of its attorneys, agents and representatives have met the duty of candor and good faith required under 37 C.F.R. § 1.56, which includes a duty to disclose all information known to that individual to be "material to patentability," as such is defined in 37 C.F.R. § 1.56. Except as set

forth in Section 3.8(b) of the Company Disclosure Letter, none of the Registered IP Rights has expired or lapsed, or been abandoned, disclaimed, cancelled or forfeited, in whole or in part, specifically excluding (for the avoidance of doubt) the cancellation, abandonment, or narrowing of claims in the ordinary course of prosecution before the United States Patent and Trademark Office ("USPTO") and its foreign equivalents; and the Company has not taken any action or failed to take any action, and to the Company's knowledge, there are no facts or circumstances that could form the basis for, or result in, the abandonment, disclaimer, cancellation, forfeiture, relinquishment, invalidation, or unenforceability of any of the Registered IP Rights, specifically excluding (for the avoidance of doubt) actions taken in the ordinary course of prosecution before the USPTO and its foreign equivalents.

(g) As of the date of this Agreement, the Company is not subject to any legally binding contract, agreement or other arrangement that restricts the Company's use, transfer, delivery or licensing of Company Intellectual Property other than as set forth in the IP Licenses listed in Section 3.8(d) of the Company Disclosure Letter (and other than as excluded by the definition of IP Licenses).

(h) The Company owns, or otherwise possesses valid and enforceable rights to use, all Intellectual Property necessary for the development, manufacture and commercialization of the Lead Product. To the Company's knowledge, the Company owns, or otherwise possesses valid and enforceable rights to use, all Intellectual Property necessary for the conduct of the Current Company Business and development, manufacture and commercialization of the Products other than, in the case of Combination Products, to the extent such Products contain an active ingredient not Controlled by the Company, in their existing form as currently contemplated by the Company, as evidenced by its written records, other than as set forth in Section 3.8(h) of the Company Disclosure Letter.

(i) The conduct of the business of the Company with respect to the Lead Product, and to the Company's knowledge, with respect to Other Products, has not and does not Infringe or constitute unlawful use of the IP Rights of any other Person or constitute unfair competition or unfair trade practices under the Applicable Laws of any jurisdiction. The Company has not received any written notice relating to any actual, alleged or suspected Infringement of any IP Rights of another Person or unfair competition or unfair trade practices by the Company or any of the Company's Employees, consultants, licensees, customers, vendors, suppliers or independent contractors, and the Company has not received any written communication that involves an offer to license or grant any other rights or immunities under any IP Rights of a Third Party that could reasonably be interpreted as alleging Infringement of such Third Party's IP Rights. To the Company's knowledge, there are no facts or circumstances (including the existence of any dominating or blocking claims in any valid, enforceable and issued Patent Rights or, to the Company's knowledge, claims of published applications for Patent Rights that would be dominating or blocking if granted) that would reasonably be likely to provide a basis for any of the foregoing or that otherwise would reasonably be expected to be asserted by a Person to exclude or prevent the Company from practicing the methods claimed in Company Patents.

(j) To the Company's knowledge, as of the date of this Agreement, no Company Intellectual Property is being Infringed by any Third Party, and no complaints, Claims, actions, suits or proceedings (including in the form of cease-and-desist letters or offers or invitations to obtain a license) have been threatened or made by or on behalf of the Company against any Person of any actual or suspected Infringement of any Company Intellectual Property.

(k) The Company has taken all reasonable measures to protect its rights, title and interests in and to all Company Intellectual Property and to maintain, protect, and preserve the security, confidentiality, value and ownership of all non-public Company Intellectual Property (including all Trade Secret Rights), including by implementing commercially reasonable security measures and requiring any Person to which the Company provides access to such Trade Secret Rights and other non-public Company Intellectual Property to execute and deliver to the Company a confidentiality agreement consistent with clause (Y) of Section 3.8(a)(iii). To the Company's knowledge, there has been no unauthorized access, disclosure, use, modification or other misuse of any non-public Company Intellectual Property (including any Trade Secret Rights). All current and former officers and Employees of the Company who are or were involved in, or who have participated in or contributed to, the conception, development, creation, reduction to practice, improvement to or modification of the Products or any IP Rights used or held or intended for use in the Current Company Business (or any portion thereof) have executed and delivered to the Company a valid and enforceable agreement assigning to the Company all IP Rights created in the course and scope of their engagement with the Company. All current and former consultants and contractors to the Company who are or were involved in, or who have participated in or contributed to, the conception, development, creation, reduction to practice, improvement to or modification of the Products or any IP Rights used or held or intended for use in the Current Company Business (or any portion thereof) have executed and delivered to the Company an agreement assigning to the Company all IP Rights created in the course and scope of their engagement with the Company. To the Company's knowledge, no current or former officer, Employee or consultant of the Company is in violation of any term of any such proprietary information assignment agreement between such Person and the Company. No current or former founder, Employee, consultant or independent contractor of the Company has any right, license or claim to any IP Rights owned or purportedly owned by the Company (other than (A) any inalienable rights pertaining to authors or inventors, *provided, however*, that in such a case such authors or inventors have waived such inalienable rights in favor of the Company to the extent legally permissible, and (B) any limited licenses to perform services for or on behalf of the Company).

(l) Each Company Patent properly identifies all inventors who should have been named as inventors in accordance with the Applicable Laws of the jurisdiction in which such Patent Right is issued or is pending. Each inventor named on a Company Patent alone or together with any joint owners, has executed an agreement actually assigning his or her entire right, title and interest in and to such Company Patent in accordance with all Applicable Laws, and the inventions embodied and claimed therein, to the Company (or to the Person who has entered into a written agreement to license such Patent Rights to the Company), alone or together with any joint owners as appropriate. To the Company's knowledge, no such inventor has any contractual or other obligation that would preclude any such assignment or otherwise conflict with the obligations of such inventor to the Company or appropriate owners under such agreement with the Company or such appropriate owners, as the case may be.

(m) No funding, facilities, or personnel of any Governmental Entity or educational institution were used to develop or create in whole or in part, any of the Company Owned Intellectual Property. The Company has, and to the Company's knowledge its licensors have, complied with any and all obligations pursuant to the Bayh-Dole Act, including with respect to any Company Patents, as well as any and all other obligations applicable to Company Intellectual Property as a result of the use of funding or other resources of any Governmental Entity. The Company has complied with any and all obligations applicable to it as a result of the use of funding, facilities, or personnel of any educational institution.

(n) The Company has taken all commercially reasonable steps to ensure the continued operation of the Software and databases included in the Company Intellectual Property, as well as all of its computers and other information technology infrastructure and assets used in the Current Company Business (collectively, the "IT Assets"). The IT Assets of the Company operate and perform in all material respects as is necessary and sufficient for the conduct of the Current Company Business in the manner in which it is currently being conducted. To the Company's knowledge, all Software used in the Current Company Business is free from malicious code and does not contain any bugs, errors or problems that, in each case, would be expected to materially adversely impact the operation of any such Software.

(o) The collection, interception, storage, receipt, purchase, sale, transfer, processing and use by the Company of all data or information constituting the personally identifiable information of any natural Person ("Personally Identifiable Information"), including Employees and participants in clinical trials, are in accordance in all respects with all Applicable Laws relating to privacy, data security, and data protection and the applicable privacy policies of the Company (or applicable Company terms of use) as published on any website or any other privacy policies (or applicable terms of use), documents, or promises or representations presented to or impliedly agreed to by or on behalf of the Company with Employees or customers (actual or potential), or other Persons and to which the Company is bound or otherwise subject and any contractual obligations of the Company to its customers (actual or potential), Employees, or other Persons regarding privacy, security or confidentiality (collectively, "Personally Identifiable Information Obligations").

(p) None of the execution or delivery of this Agreement, or the consummation of the transactions contemplated hereby or the performance by the Company of its obligations hereunder, or transfer of Personally Identifiable Information to Parent or Parent's use of such information to carry on the business conducted by the Company (subject to the Company providing prior notice of such transfer, if required by its Personally Identifiable Information Obligations, if any) violate or will violate any of the Personally Identifiable Information Obligations of the Company.

3.9 Material Contracts.

(a) Section 3.9(a)(i) of the Company Disclosure Letter lists all of the Material Contracts in effect as of the date of this Agreement. The Company has delivered to Parent, or made available to Parent or its advisors, a complete and accurate copy (or, with respect to oral contracts, a summary thereof), of each such Material Contract and all amendments or modifications thereto that exist as of the date of this Agreement. Section 3.9(a)(ii) of the Company Disclosure Letter lists each

Contract pursuant to which the Company or any other party thereto has material continuing obligations, rights or interests relating to the research, development, clinical trial, distribution, supply, manufacture, marketing or co-promotion of, or collaboration with respect to, any product or product candidate for which the Company is currently engaged in research or development, in each case that is terminable by either party without penalty or other material obligation (which, for the avoidance of doubt, does not include obligations such as the return or destruction of confidential information or notice rights) on notice of thirty (30) days or less (excluding incidental and immaterial provisions, and customary indemnities, that by their terms survive termination of the relevant Contract).

(b) With respect to each Material Contract: (i) such Material Contract is in full force and effect as of the date hereof and is binding and enforceable against the Company and to the Company's knowledge, any other party to such Material Contract, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar Applicable Laws affecting or relating to creditors' rights generally and general principles of equity, regardless of whether asserted in a proceeding in equity or at law; and (ii) (A) neither the Company nor, to the Company's knowledge, any other party to a Material Contract, is in material breach or material default of such Material Contract, and (B) to the Company's knowledge, no event has occurred that with notice or lapse of time would constitute a material breach or material default thereunder by the Company or any other party to such Material Contract, or would permit the modification or premature termination of such Material Contract by any other party thereto.

(c) "Material Contract" means:

(i) each Contract to which the Company is a party that has continuing obligations or interests, in each case involving the payment of royalties or other amounts calculated based upon the revenues, income or other financial performance of the Company;

(ii) each Contract pursuant to which the Company or any other party thereto has continuing obligations, rights or interests relating to the research, development, clinical trial, distribution, supply, manufacture, marketing or co-promotion of, or collaboration with respect to, any product or product candidate for which the Company is currently engaged in research or development, in each case that is not terminable by either party without penalty or other material obligation (which, for the avoidance of doubt, does not include obligations such as the return or destruction of confidential information or notice rights) on notice of thirty (30) days or less (excluding incidental and immaterial provisions, and customary indemnities, that by their terms survive termination of the relevant Contract);

(iii) each Contract evidencing Indebtedness or under which it has been imposed (or may impose) a lien on any of its assets, tangible or intangible;

(iv) each Contract with any Governmental Entity;

(v) each non-competition Contract or other Contract that limits or purports to limit either the type of business in which the Company (or, after giving effect to the Merger, Parent or its Subsidiaries) may engage or the locations in which any of them may so engage any business;

(vi) each Contract between or among the Company and a Related Party;

(vii) each IP License;

(viii) each Contract, whether or not made in the ordinary course of business, that would reasonably be expected to result in aggregate payments by or to the Company on or after the date of this Agreement in excess of (A) Fifty Thousand Dollars ($50,000) in the current or any future Calendar Year or (B) One-Hundred Thousand Dollars ($100,000) in the aggregate over the remaining term of such Contract;

(ix) all joint venture, partnership, strategic alliance or business acquisition or divestiture agreements or similar Contracts to which the Company is a party or has obligations or rights thereunder (and all letters of intent, term sheets and draft agreements relating to any such pending transactions);

(x) all Contracts (other than Contracts evidencing Company Options, Warrants or Convertible Debt) (A) relating to the acquisition, issuance, voting, registration, sale or transfer of any Equity Participations of the Company, (B) providing any Person with any preemptive right, right of participation, right of maintenance or similar right with respect to any Equity Participations of the Company, or (C) providing the Company with any right of first refusal with respect to, or right to repurchase or redeem, any Equity Participations;

(xi) all leases of real property leased for the use or benefit of the Company and all leases of personal property involving annual payments by the Company in excess of One Hundred Thousand Dollars ($100,000);

(xii) each employment, consulting, severance, retention or change in control agreement or any other Contract (A) relating to the employment of, or the performance of services by, any Employee or Contract Worker of the Company, (B) pursuant to which the Company is or may become obligated to make any severance, termination or similar payment to any current or former Employee or Contract Worker, or which otherwise modifies the at-will relationship with an Employee or modifies the relationship of a Contract Worker, or (C) pursuant to which the Company is or may become obligated to make any bonus or similar payment (whether in the form of cash, stock or other securities) to any current or former Employee, director, consultant or other service provider;

(xiii) each Contract that provides for the indemnification of any Person (other than the Company Organizational Documents);

(xiv) all Contracts imposing any restriction on the right or ability of the Company to do any of the following: (A) to compete with, or solicit any customer of, any other Person; (B) to acquire any product or other asset or any services from any other Person; (C) to solicit, hire or retain any Person as an Employee, consultant or independent contractor; (D) to develop, sell, manufacture, supply, distribute, offer, support or service any product or technology or any other asset to or for itself or any other Person; (E) to perform services for itself or any other Person; or (F) to transact business or deal in any other manner with any other Person;

(xv) all Contracts providing for any royalty, milestone or similar payments by the Company;

(xvi) all Contracts for the disposition of any significant portion of the assets or business of the Company or any agreement for the acquisition of the assets or business of any other Person;

(xvii) any settlement Contract or settlement-related Contract (including any Contract in connection with which any employment-related Claim is settled);

(xviii) any Contract that would entitle any Third Party to receive a license or any other right to intellectual property of Parent or Parent's Affiliates (excluding the Company) following the Closing;

(xix) any Contract under which the consequences of a default or termination would reasonably be expected to have a Company Material Adverse Effect;

(xx) any Contract that, following the Closing, would bind or purport to bind Parent or any of its Affiliates (excluding the Company);

(xxi) all Contracts that, by virtue of the change in control resulting from the completion of the transactions contemplated by this Agreement, require consent or contain any clause that would trigger adverse consequences for Parent or Merger Sub or the Company (or following the Effective Time, the Surviving Corporation) or that would otherwise prevent, delay or impede the Company's ability to consummate the transactions contemplated by this Agreement; and

(xxii) any other Contract (or group of related Contracts) either involving more than Fifty Thousand Dollars ($50,000) or not entered into in the ordinary course of business.

3.10 Title to Tangible Assets. The Company has (a) good and valid title to all of the owned tangible Assets reflected in the Company Balance Sheet and all tangible Assets of the Company acquired after the Company Balance Sheet Date (except for tangible Assets sold or otherwise disposed of since the Company Balance Sheet Date), and (b) with respect to leased tangible Assets, valid leasehold interests therein, free and clear of all mortgages, liens, pledges, charges or other encumbrances of any kind or character, except for the following (collectively, "Permitted Encumbrances"): (i) liens for current Taxes not yet delinquent or that are being contested in good faith by appropriate proceedings with appropriate reserves established; (ii) encumbrances that do not materially impair the use of the Assets to which they relate; (iii) liens securing Indebtedness that is reflected on the Company Balance Sheet; (iv) statutory or common law liens to secure obligations to landlords, lessors or renters under leases or rental agreements, or in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies, in each case for sums not yet due and payable or due but not delinquent or being contested in good faith by appropriate proceedings; and (v) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by Applicable Law.

3.11 Real Estate.

(a) The Company does not own nor has it formerly owned any real property. Section 3.11 of the Company Disclosure Letter sets forth a true and complete description of all leases, licenses, Permits, subleases, and occupancy agreements (each a "Lease" and collectively, "Leases"), with respect to all real property leased, subleased or otherwise occupied by the Company (the "Leased Real Property") with the name of the lessor, sublessor or licensor, the name of the lessee or sublessee, the address of such Lease and the date of the lease, sublease, assignment of the lease, any guaranty given, any consent received and any leasing commissions payable by the Company in connection therewith and each amendment to any of the foregoing and all ancillary documents pertaining thereto. All Leases are in full force and effect and are binding and enforceable against the Company, and, to the Company's knowledge, against the lessors, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar Applicable Laws affecting or relating to creditors' rights generally and general principles of equity, regardless of whether asserted in a proceeding in equity or at law. True and correct copies of all such Leases, as amended or modified through the date hereof, have been delivered to Parent or its advisors (or have been made available to Parent or its advisors).

(b) The Company is not in default in any material respect of any of the Leases and, to the Company's knowledge, no other party to any of the Leases is in default thereof in any material respect. The Company has not received any notice of (i) termination or cancellation of any Lease or (ii) any proceedings in eminent domain, condemnation or other similar proceedings that are pending and served affecting any material portion of real property that is the subject of a Lease.

(c) The Leased Real Property constitutes all real property currently leased, used, occupied or held for use in connection with the Current Company Business.

3.12 Environmental Matters.

(a) The following terms shall be defined as follows:

(i) "Environmental Laws" means any Applicable Laws relating to the regulation, pollution or protection of the environment, human health or safety or natural resources, exposure of any individual to Hazardous Materials, or the handling, use, manufacturing, processing, distribution, sale, storage, treatment, transportation, Release, re-use or recycling of Hazardous Materials, including the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended ("CERCLA"), and the federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended ("RCRA").

(ii) "Hazardous Materials" means any material, chemical, compound, substance, waste, mixture or by-product that is identified, defined, designated, listed, restricted or otherwise regulated or forms the basis of liability under Environmental Laws because of its hazardous, infectious or deleterious properties, including "hazardous substances" under CERCLA, "hazardous waste" and "solid waste" under RCRA, petroleum or petroleum products (including crude oil or any fraction thereof), toxic mold, asbestos, and biological, biomedical or medical waste.

(iii) "Release" means any emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Materials from any source into, through or upon the indoor or outdoor environment.

(b) As of the date hereof: (i) the Company is in material compliance and has complied in all material respects with all applicable Environmental Laws, has timely obtained, holds and maintains all Permits, required under Environmental Laws necessary to the conduct of the business of the Company and is in compliance in all material respects with respect thereto; (ii) there has been no Release at, on, under or from the Assets currently owned, leased or operated by the Company or any real property formerly owned, leased or operated by the Company during Company's ownership, tenancy or operation that would be reasonably expected to result in material Liability to, or a material corrective action obligation on the part of, the Company; (iii) the Company has not arranged, by contract, agreement, or otherwise, for the transportation, disposal or treatment of Hazardous Materials at or to any location such that it may be subject to material Liability under Environmental Laws; (iv) the Company has not received any written notice alleging that the Company may be in material violation of or subject to material Liability under any applicable Environmental Law; (v) the Company is not a party to, or named in, any order, decree, injunction or other agreement with any Governmental Entity and there is no pending, or to the knowledge of the Company, threatened actions, suits, Claims or proceedings relating to material Liability of the Company under any Environmental Law or relating to Hazardous Materials; and (vi) the Company has made available to Parent copies of all written environmental reports, studies and sampling data and other material environmental documents in its possession or under its control relating to the Company, any real property formerly owned, operated or leased by the Company or any Assets of the Company.

3.13 Taxes.

(a) As used in this Agreement, the terms "Tax" and "Taxes" mean all income, profits, gross receipts, environmental, customs duty, capital stock, sales, use, occupancy, value added, ad valorem, stamp, franchise, withholding, payroll, employment, unemployment, disability, excise, property, production, escheat and other Taxes or similar duties or assessments imposed by any Governmental Entity (whether national, state, provincial, local, municipal or otherwise) or political subdivision thereof, together with all interest, penalties and additions imposed with respect to such amounts, any interest in respect of such penalties or additions, and any Tax with respect to a taxable period or portion thereof ending on or before the Closing Date of any other Person for which the Company is or may be liable (i) as a successor or transferee, (ii) under any legally binding agreements or arrangements or (iii) otherwise by operation of law, but only to the extent for clauses (i), (ii) and (iii) that the event giving rise to the successor or transferee liability, or liability by operation of law, or the agreement or arrangement, as applicable, occurred or was entered into prior to the Closing Date.

(b) Each of the returns, declarations, estimates, information statements or reports filed or required to be filed with a Governmental Entity with respect to Taxes ("Tax Returns") by or with respect to the Company: (i) has been timely filed on or before the applicable due date (including any extensions of such due date) and (ii) is true and complete in all material respects. All Taxes due and payable by the Company have been timely paid, except to the extent such amounts are being contested in good faith by the Company (in which case such amounts are set forth in Section 3.13(b) of the Company Disclosure Letter).

(c) All Taxes that the Company has been required to collect or withhold have been duly collected or withheld and all Taxes collected or withheld have been duly and timely paid to the proper Governmental Entity.

(d) There has not been any audit, examination or other administrative or court proceeding for Taxes of the Company by any Governmental Entity and the Company has not been notified in writing by any Governmental Entity that any such audit, examination or other administrative or court proceeding for Taxes is contemplated or pending. No waiver or agreement by or with respect to the Company is in force for the extension of time for the payment, collection or assessment of any Taxes. No Claim has been made in writing to the Company by any Governmental Entity in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction. Each deficiency resulting from any completed audit or examination relating to Taxes by any Governmental Entity has been timely paid or is being contested in good faith, has been adequately reserved for on the books of the Company and is disclosed in Section 3.13(d) of the Company Disclosure Letter.

(e) The Company Financial Statements contain adequate accruals for the unpaid Taxes of the Company through the date of such Company Financial Statements. Since the Company Balance Sheet Date, the Company has not incurred any Liability for Taxes outside of the ordinary course of business.

(f) There are no liens for Taxes on any asset of the Company other than Taxes not yet due and payable.

(g) There are no adjustments under Section 481 of the Code (or any similar adjustments under any provision of corresponding foreign, state or local Tax laws) that are required to be taken into account by the Company in any period ending after the Closing Date by reason of a change in method of accounting in any taxable period ending on or before the Closing Date. The Company does not have any material income or gain reportable that is attributable to a transaction (e.g., an installment sale or open transaction disposition) which resulted in a deferred reporting of income or gain from such transaction. There is no application pending with any Governmental Entity requesting permission for any change in any accounting method of the Company, and the Internal Revenue Service has not issued in writing any pending proposal regarding any such adjustment or change in accounting method.

(h) No income has to be included by the Company under Section 108(i) of the Code (or any similar provision of the Tax laws of any jurisdiction) in respect of any cancellation of indebtedness income in any taxable period ending after the Closing Date.

(i) The Company is not a party to any written agreement with any Third Party the principal purpose of which is allocating or sharing the payment of, or Liability for, Taxes. The Company does not have any Liability for the Taxes of any Third Party under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign Applicable Law) or as a transferee or successor, by contract or otherwise.

(j) The Company has not been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code or of any group that has filed a combined, consolidated or unitary return under state, local or foreign Applicable Law.

(k) The Company has not participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b). The Company has disclosed on its United States federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of United States federal income Tax within the meaning of Section 6662 of the Code.

(l) The Company is not (and has not been for the five-year period ending at Closing) a "United States real property holding corporation" as defined in Section 897(c)(2) of the Code and the applicable Treasury Regulations.

(m) The Company has not been a party to any distribution occurring during the last two years in which the parties to such distribution treated the distribution as one to which Section 355 or Section 361 of the Code is applicable; nor has the Company been a party to any distribution that could constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the transactions contemplated by this Agreement.

3.14 Employee Benefit Plans.

(a) Schedule. Section 3.14(a) of the Company Disclosure Letter sets forth a list as of the date hereof of each Company Employee Plan. The Company has no commitments to establish any new Company Employee Plan, to materially modify any Company Employee Plan (except to the extent required by Applicable Law or as required by this Agreement), or to adopt or enter into any Company Employee Plan.

(b) Documents. With respect to each Company Employee Plan, the Company has provided or made available to Parent a current copy of the plan document (including amendments) or, to the extent no such copy exists, a written description of such Company Employee Plan and, to the extent applicable: (i) any related trust agreement (including amendments) and any other material contracts including insurance contracts and administrative services agreements; (ii) the most recent IRS determination letter or opinion letter; (iii) the three (3) most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan; (iv) the most recent summary plan description and all summaries of material modifications since the most recent summary plan description; (v) any non-routine correspondence with the Department of Labor, Internal Revenue Service, or any other Governmental Entity regarding a Company Employee Plan (including, for example, any request for information about a Company Employee Plan or any notification of an audit or investigation concerning a Company Employee Plan); and (vi) the most recent annual actuarial valuation, if any. In addition, the Company has provided or made available to Parent the Company's most recent employee handbook and all other material employment policies.

(c) Compliance. In all material respects, each Company Employee Plan has been established, operated and maintained in accordance with its terms and in compliance with all Applicable Laws, including ERISA and the Code.

(i) Each Company Employee Plan intended to be qualified under Section 401(a) of the Code and each trust intended to qualify under Section 501(a) of the Code has obtained a favorable determination, notification, advisory and/or opinion letter, as applicable, as to its qualified status from the IRS. For each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code, there has been no event, condition or circumstance that could reasonably be expected to adversely affect such qualified status.

(ii) No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Employee Plan that would reasonably be expected to result in any material liability.

(iii) No fiduciary or administrator (or any employee or agent thereof) of a Company Employee Plan has engaged in any transaction or acted or failed to act in a manner that could subject the Company to any material liability for breach of fiduciary duty under ERISA or any other Applicable Law (whether such liability is directly against the Company, or the result of any existing indemnity agreements).

(iv) The Company and each Company Employee Plan are in material compliance with the applicable terms of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, and the guidance and regulations issued under each of the foregoing.

(v) Each Company Employee Plan that is a "nonqualified deferred compensation plan" (as such term is defined in Section 409A(d)(1) of the Code) has been administered in all material respects in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and the regulations thereunder.

(vi) There are no current actions, suits or Claims pending, or, to the Company's knowledge, threatened or reasonably anticipated (other than routine Claims for benefits) against any Company Employee Plan, against the assets of any Company Employee Plan or relating to any Company Employee Plan. There are no audits, investigations, inquiries or proceedings pending or, to the Company's knowledge, threatened by any Governmental Entity with respect to any Company Employee Plan.

(vii) The Company is not subject to any penalty or Tax with respect to any Company Employee Plan under Section 502 of ERISA or Sections 4975 through 4980 of the Code. The Company has timely made or paid all contributions, premium payments and other payments required by and due under the terms of each Company Employee Plan or Applicable Law.

(viii) All contributions to all Company Employee Plans for any period ending on or before the Closing Date that are not yet due have been made to each such plan or accrued in accordance with past custom and practice of the Company and any applicable accounting requirements.

(d) No Pension or Welfare Plans. Neither the Company nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, or contributed to, or has ever been required to contribute to, any (i) employee benefit plan that is subject to Title IV of ERISA or Section 412 of the Code; (ii) Multiemployer Plan; (iii) plan maintained in connection with any trust described in Section 501(c)(9) of the Code or (iv) "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA.

(e) No Post-Employment Obligations. No Company Employee Plan provides, or reflects or represents any liability to provide, and the Company does not otherwise have any obligation to provide, post-termination or retiree welfare benefits to any Person for any reason, except as may be required by COBRA or other similar applicable statute or pursuant to a severance arrangement set forth on Section 3.14(a) of the Company Disclosure Letter.

(f) Effect of Transaction.

(i) Except as described in Section 3.14(f)(i) of the Company Disclosure Letter, neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Employee Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee.

(ii) No payment or benefit which will or may be made under any Company Employee Plan or any other payment that the Company has agreed to make, directly or indirectly, as of the date hereof with respect to any "disqualified individual" (as defined in Code Section 280G and the regulations thereunder and hereafter referred to as a "Disqualified Individual") in connection with this Agreement or the transactions contemplated hereby will be characterized as a parachute payment within the meaning of Code Section 280G(b)(2).

(iii) There is no contract, agreement, plan or arrangement to which the Company is a party or by which the Company is bound to compensate any Employee for any Tax or penalty incurred by such Employee pursuant to Sections 4999 or 409A of the Code.

(g) Employment Matters. Section 3.14(g) of the Company Disclosure Letter contains a true and complete list of the names, position titles, annual salaries (or hourly rates), incentive compensation, bonuses, other compensation, assigned work location, exemption classification under the Fair Labor Standard Act, and full-time, part-time, temporary or seasonal employee status of all Employees, as of the date hereof. Section 3.14(g) also contains a true and complete list of the names, compensation arrangement, location where services are provided and type of services provided of all Contract Workers of the Company, as of the date hereof. Section 3.14(g) of the Company Disclosure Letter further sets forth the citizenship and immigration status of

each Employee of the Company who is not a U.S. citizen. Except for the employment agreements listed in Section 3.14(g) of the Company Disclosure Letter, all Employees are employed on an "at-will" basis and their employment can be terminated at any time for any reason without any amounts being owed to such individual other than with respect to wages or unused vacation accrued before the termination. The Company's relationships with all Contract Workers to the Company can be terminated at any time for any reason without any amounts being owed to such individual other than with respect to compensation or payments accrued before the termination. No Employee is on disability or other leave of absence. The Company has properly accrued in the ordinary course of business and is not delinquent in payments to any of its current or former Employees or Contract Workers for any wages, overtime, salaries, commissions, bonuses, fees or other compensation for any services performed, directly or indirectly, for the Company as of the date of this Agreement or amounts required to be reimbursed to such current or former Employees or Contract Workers. The Company is and in the past four years has been in compliance with all Applicable Laws concerning employment, employment practices, classification of Employees and Contract Workers, terms and conditions of employment, Tax withholding, prohibited discrimination, harassment and/or retaliation, disability rights and benefits, reasonable accommodation, equal employment, fair employment practices, immigration status, hiring and termination of Employees, plant closures and layoffs, data protection and employee privacy, leaves of absence, workers compensation, pension and unemployment insurance and employment related Taxes, employee safety and health, and wages and hours. Each individual that renders services to the Company that is classified as (i) a Contract Worker or other non-employee status or (ii) an exempt or non-exempt employee, is properly classified for all purposes, including (x) Taxation and Tax reporting, (y) Fair Labor Standards Act purposes and (z) Applicable Laws governing the payment of wages (including overtime), and the Company has properly classified and treated them in accordance with all Applicable Laws and for purposes of all Company plans and perquisites. No current Employee has resigned, or threatened to resign, from Employment. No current Contract Worker has terminated, or has threatened to terminate, his/her relationship with the Company.

(h) WARN Act. On or before the Closing Date, the Seller shall provide Parent with a true, correct and complete list of all Employees whose employment has been terminated by the Company within ninety (90) calendar days preceding the Closing Date, whose work hours have been reduced within six (6) months preceding the Closing Date, or has been relocated at least 100 miles away; such list will indicate the Employee's name, site of employment, position or job title, starting date of employment, and date of employment loss, termination or layoff, and, if applicable, the amount of hour reduction for each calendar month during the six (6) month period preceding the Closing Date. In the 12 months preceding the Closing Date, the Company has not effectuated (i) a "plant closing," a "mass layoff," "termination," or "relocation" (as defined in the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. Sections 2101 et seq., California Labor Code Sections 1400 et seq., or any similar law (collectively, the "WARN Act")) that would trigger notice or liability under any federal, state, local or foreign employment notice law or collective bargaining agreement. The Company is, and has at all times been, in compliance with the WARN Act.

(i) Labor. The Company is not a party to or bound by any collective bargaining agreement, works council, or union contract with respect to its Employees and no collective bargaining agreement is currently being negotiated by the Company. The Company has not received a request by any labor union or labor organization to negotiate or enter into any such collective

bargaining agreement. The Company has no duty to recognize or bargain with any labor union or labor organization or other Person purporting to act as the exclusive bargaining representative of any Employees of the Company with respect to wages, hours or other terms and conditions or to engage in effects bargaining or other bargaining relating to or in connection with, or to provide advance notice of, any prior or contemplated transactions. There is no labor dispute, strike or work stoppage against the Company pending or, to the Company's knowledge, threatened in writing or reasonably anticipated which may materially interfere with the respective business activities of the Company. To the Company's knowledge, none of the Company or any of its representatives or Employees has committed any material unfair labor practice in connection with the operation of the respective businesses of the Company. There are no, and within the last four years there have been no, (i) Claims with respect to employment or labor matters (including, relating to or asserting allegations of employment discrimination, harassment, retaliation, misclassification, wage and/or hour violations or unfair labor practices) existing, pending or, to the knowledge of the Company, threatened against or involving the Company in any judicial, regulatory or administrative forum, under any private dispute resolution procedure or internally or (ii) strikes, slowdowns, stoppages of work, or any other concerted interference with normal operations existing, pending or, to the knowledge of the Company, threatened against or involving the Company. Except as set forth in Section 3.14(i) of the Company Disclosure Letter, the Company is not, and within the past four years has not been, subject to any audit or investigation by any Government Authority, or subject to any Order or private settlement contract with respect to any of the Company's labor or employment practices or policies. The Company is, and at all times has been, in compliance with the requirements of the Immigration Reform Control Act of 1986. Every Employee who requires permission and/or authorization to work in the jurisdiction in which they carry out their employment had at the time of hire current and appropriate permission and/or authorization to work in that jurisdiction.

3.15 Insurance.

(a) Section 3.15(a) of the Company Disclosure Letter sets forth a true and complete list of all insurance policies, fidelity bonds and self-insurance under which the Company has been an insured, the named insured or otherwise the principal beneficiary of coverage or which have provided coverage for the Company's assets or liabilities at any time within the past year (collectively "Insurance Policies") showing each of the following: (i) the name(s) of the insurer(s) or underwriters and the named insured; (ii) the policy number; (iii) the policy period and type of coverage; (iv) the premium charged; (v) the limit(s), deductibles, retentions or co-insurance; and (vi) a current, complete and accurate list of all insurance Claims, occurrences, circumstances and other matters notified to the insurer during the year preceding the date of this Agreement. The Company has made available to Parent true and complete copies of all Insurance Policies (or, if such Insurance Policies have not yet been issued, binders of insurance) together with all endorsements, schedules, amendments, side letters, certificates of insurance and similar documents related thereto.

(b) With respect to such Insurance Policies: (i) each Insurance Policy is legal, valid, binding and enforceable in accordance with its terms and, except for Insurance Policies that have expired under their terms in the ordinary course of business, is in full force and effect; and (ii) the Company is not in breach in any material respect or default (including any such breach or default with respect to the payment of premiums or the giving of notice), and to the Company's knowledge, no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination or modification, under the Insurance Policy.

(c) The Company has paid all premiums when due and has otherwise performed in all material respects all its obligations under all Insurance Policies. No insurer has threatened to terminate, cancel, rescind or avoid any of the Insurance Policies. The Company has not received any written notice or other written or electronic communication from any insurer indicating that the insurer will not renew any Insurance Policy or that the insurer intends to reduce the scope or limits of coverage or to materially increase the deductibles, retentions, co-insurance or the premiums for such Insurance Policies. There are no material Claims for coverage asserted by or on behalf of the Company that are currently pending under any policy of insurance, regardless of the policy period.

3.16 Compliance With Laws; Permits.

(a) Compliance. The Company and any Person performing services for or on behalf of the Company, is, and has at all times been, acting or operating in compliance in all material respects with all Applicable Laws, including those applicable to any Product. Neither the Company, nor, to the Company's knowledge, any Person acting for it or on its behalf, has (i) received any written notice, notification or communication from any Governmental Entity or other Person regarding any actual or possible violation of, or failure to comply with any provision of, any Applicable Law or Order, including any Applicable Law or Order applicable to any Product, or (ii) filed or otherwise provided any notice, notification or communication to any Governmental Entity or other Person regarding any actual or possible violation of, or failure to comply with any provision of any Applicable Law. There is no judgment, injunction, order or decree binding upon the Company which has or would reasonably be expected to have the effect of prohibiting or materially impairing the Current Company Business.

(b) Neither the Company, nor to the Company's knowledge, any director, officer, agent or Employee of the Company, has (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity or (ii) made any unlawful payment to foreign or domestic government officials or Employees or to foreign or domestic political parties or campaigns or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any other United States federal, foreign or state anti-corruption or anti-bribery law or requirement applicable to the Company, in each case ((i) and (ii)), with respect to the business, or on behalf, of the Company.

(c) Permits. The Company and any Person performing services for or on behalf of the Company, is and has at all times been in possession of all permits, registrations, notifications, franchises, grants, authorizations (including marketing and testing authorizations), concessions, licenses, easements, variances, exceptions, exemptions, consents, certificates, clearances, approvals and Orders of or with any Governmental Entity, including the FDA, ("Permits") necessary for it to own, lease and operate its properties or to carry on the Current Company Business, and as the same has been conducted or as it is now proposed to be conducted, except where the failure to possess such Permits would not reasonably be expected to result in a Company Material Adverse Effect. Each Permit is valid and in full force and effect, and accurate and complete copies of all Permits held by the Company have been delivered to Parent. A true and complete list of all Permits held by

the Company is set forth in Section 3.16(c) of the Company Disclosure Letter. As of the date hereof, no revocation, suspension, limitation, cancellation, termination or withdrawal of any of the Company Permits is pending or, to the Company's knowledge, threatened. The Company is in compliance in all material respects with the terms of the Permits. The Company has not received any notice from any Governmental Entity regarding (i) any actual or possible violation of or failure to comply with any material term or requirement of any Permit, or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or limitation of any Permit.

3.17 Brokers' and Finders' Fee. Except for fees owing to Raymond James & Associates, Inc., no broker, finder, financial advisor, investment banker or other Person is entitled to brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges from the Company in connection with the Merger, this Agreement or any transaction contemplated hereby based on arrangements or authorization made by or on behalf of the Company.

3.18 Takeover Statutes. No "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation (each, a "Takeover Statute") is applicable to the Merger. The board of directors of the Company has taken all action so that neither Parent nor Merger Sub will be prohibited from entering into a "business combination" with the Company as an "interested stockholder" (in each case as such term is used in Section 203 of Delaware Law) as a result of the execution of this Agreement, or the consummation of the Merger or the other transactions contemplated hereby.

3.19 Regulatory Compliance.

(a) The Products have been researched, developed, tested, manufactured, handled, labeled, packaged, stored, supplied, promoted, distributed, marketed, commercialized, imported, exported, and sold by or on behalf of the Company, as applicable, in compliance with the FDCA, other Health Care Laws, and all other Applicable Law.

(b) Section 3.19(b) of the Company Disclosure Letter sets forth an accurate and complete listing as of the date hereof by study title and report number of all pre-clinical studies and clinical trials previously or currently undertaken or sponsored with respect to any Product in connection with or as the basis for any regulatory submission by or on behalf of the Company to the FDA or any other Regulatory Authority, whether inside or outside of the United States. The Company has made available to Parent accurate and complete copies of the study reports of (i) all clinical, pre-clinical and non-clinical trials conducted by or on behalf of the Company with respect to any Product, and (ii) all clinical, pre-clinical and non-clinical study reports submitted to a Regulatory Authority with respect to any Product. Section 3.19(b) of the Company Disclosure Letter lists all clinical trial sites for all clinical trials conducted by or for or on behalf of the Company with respect to any Product.

(c) All pre-clinical studies and clinical trials, and other studies and tests with respect to any Product that have been or are being conducted by or for or on behalf of the Company, including each such study conducted at the sites listed in Section 3.19(b) of the Company Disclosure Letter, are being or have been conducted in compliance with the required experimental protocols, procedures and controls, including as applicable cGLP, cGCP and all other Applicable Law, and have employed the procedures and controls generally used by qualified investigators in pre-clinical studies and clinical trials of products comparable to those being developed by the Company.

(d) Since January 1, 2015, the Company and, to the Company's knowledge, the manufacturer(s) that manufacture or have manufactured any Product or any ingredient or component thereof for or on behalf of the Company during such period, at all times have been, and currently are, in compliance in all material respects with FDA's registration and listing requirements to the extent required by Applicable Law in relation to the manufacture of any Product or any ingredient or component thereof, and all Products and any ingredients or components thereof, have been manufactured in accordance with all Applicable Law, including cGMP.

(e) Neither the Company nor any representative of the Company nor, to the Company's knowledge, any of its licensees or assignees of Company-Owned IP Rights has received any written notice that (i) the FDA or any other Governmental Entity or any institutional review board, independent ethics committee, data safety monitoring board or other oversight body with respect to any ongoing clinical trial has initiated, or threatened to initiate, any action to suspend or terminate any clinical trial sponsored by, or to suspend or terminate any Investigational New Drug Application or any comparable foreign regulatory application held by, the Company or any of its licensees or assignees of Company-Owned IP Rights with respect to any Product, or (ii) the FDA or any other Governmental Entity has initiated or threatened to initiate any action to limit or suspend the manufacture of any Product, and to the Company's knowledge, there are no facts that would reasonably be expected to give rise to such an action described in (i) or (ii) of this Section 3.19(e).

(f) Neither the Company nor any of its directors or officers, nor to the Company's knowledge, any Employees or agents acting for or on behalf of the Company has committed any act, made any statement or failed to make any statement that has provided, or that would reasonably be expected to provide, a basis for the FDA to invoke its policy regarding "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto. Additionally, neither the Company, nor any director or officer, or to the Company's knowledge, any Employee or agent acting for or on behalf of the Company has been convicted of any crime or engaged in any conduct that has resulted in or would reasonably be expected to result in (i) debarment under 21 U.S.C. Section 335a or any similar Applicable Law, (ii) disqualification or restriction as a clinical investigator by the FDA or other Governmental Entity, or (iii) exclusion under 42 U.S.C. Section 1320a-7 or any similar Applicable Law.

(g) Except as reported in the study reports for the clinical trials of the Products, the Company has no knowledge of any material product complaints with respect to any Product or Unexpected Adverse Events reportable to the FDA or other Governmental Entities, investigators, institutional review boards or independent ethics committees, recalls, field notifications, field corrections, market withdrawals or replacements, warnings, "dear doctor" letters, safety alerts, field safety corrective actions or other notice of action relating to an alleged lack of safety, efficacy or quality of any Product (collectively, "Safety Notices"). Section 3.19(g) of the Company Disclosure Letter lists all of the following: (i) all such Safety Notices; (ii) the dates that such Safety Notices, if any, were resolved or closed; and (iii) any Safety Notices or material product complaints with respect to any Product that are currently unresolved. To the Company's knowledge, there are no facts that would be reasonably likely to result in a material Safety Notice with respect to any Product or a termination or suspension of testing of any Product.

(h) All material reports, certifications, declarations, or other technical documentation, applications, Claims and notices required to be filed, maintained, or furnished to any Governmental Entity by the Company have been so filed, maintained or furnished. All applications, notifications, certifications, declarations, submissions, information, Claims, reports, statistics, technical documentation and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all requests for a Permit relating to any Product or the business of the Company, when submitted to the relevant Governmental Entity were true, complete and correct in all material respects as of the date of submission and any necessary or required updates, changes, corrections or modifications to such applications, submissions, information and data have been submitted to the relevant Governmental Entity.

(i) The Company has made available to Parent true and correct copies of all material forms, licenses, reports, applications, correspondence, and meeting minutes received from or sent to the FDA, any other Regulatory Authority and any other Governmental Entity inside or outside the United States, and all written reports of phone conversations, visits or other contact with the FDA, any other Regulatory Authority and any other Governmental Entity inside or outside the United States relating to any Product or to compliance with any Health Care Law or other Applicable Law, including any and all written notices of inspectional observations, establishment inspection reports and any documents related to the likelihood or timing of approval of any material Permit. All such forms, licenses, reports, applications, correspondence, meeting minutes and written reports fairly and accurately represent the statements made to and information provided by the FDA, any other Regulatory Authority and any other Governmental Entity inside or outside the United States with respect to the Products or the business of the Company.

(j) The Company has not received any notice or other communication from the FDA or any other Governmental Entity alleging any violation of any applicable Health Care Law or other Applicable Law, including any failure to maintain systems and programs adequate to ensure compliance with cGMP, cGLP, and cGCP, by the Company or any Person acting on its behalf. The Company has not received any (i) written notices of inspectional observations (including those recorded on Form FDA 483), establishment inspection reports, warning letters or untitled letters, or (ii) other documents issued by the FDA or any other Governmental Entity that allege or assert lack of compliance with any Health Care Law or other Applicable Law by the Company or by Persons who have performed or are performing services for or on behalf of the Company.

(k) There are no Claims or inquiries, demands, complaints or requests for information pending or ongoing with respect to a violation by the Company of the FDCA or any other Applicable Law promulgated by any other Governmental Entity.

(l) The Company is not a party to any corporate integrity agreements, monitoring agreements, consent decrees, settlement orders, or similar agreements with or imposed by any Regulatory Authority.

(m) The Company has disclosed to Parent any other material data or information known to the Company that could reasonably be expected to be material with respect to, the safety and efficacy of each of the Products.

(n) All of the Company's products and product candidates are listed on Schedule 1.1(d).

3.20 Key Suppliers. Section 3.20 of the Company Disclosure Letter sets forth a correct and complete list of (a) the top ten (10) suppliers of the Company as of December 31, 2017 and (b) all suppliers providing raw materials to the Company. Since January 1, 2016, no material supplier of the Company has (i) canceled or otherwise terminated, or made any written threat delivered to the Company to cancel or otherwise terminate, its relationship with the Company, (ii) decreased materially its delivery of services or supplies to or activities on behalf of the Company, or (iii) indicated in writing delivered to the Company that such supplier intends to decrease materially its delivery of services or supplies to or activities on behalf of the Company, and, in each case ((i) through (iii)), the Company has no reason to believe that any such supplier will do so.

3.21 Government Contracts. The Company is not a party to any Current Government Contract. The Company has not received any notice of any outstanding Claim or dispute arising out of any Government Contract to which the Company is or was a party, and to the Company's knowledge, no facts or circumstances exist that would be reasonably expected to give rise to such a notice (a) relating to any Government Contract and involving either a Governmental Entity, any prime contractor, any higher-tier subcontractor, vendor or any Third Party; or (b) relating to any Government Contracts under the Contract Disputes Act of 1978 or any other Applicable Law.

3.22 Related Party Transactions. Section 3.22 of the Company Disclosure Letter describes any material transaction, since January 1, 2015, between the Company and any Related Party of the Company, other than any employment Contract, Contract not to compete with the Company, Contract to maintain the confidential information of the Company, or Contract assigning IP Rights to the Company, in each case listed in Section 3.9 of the Company Disclosure Letter. No Related Party of the Company (a) owns or has any interest in any property (real or personal, tangible or intangible), intellectual property or Contract used in or pertaining to the business of the Company, (b) has any Claim or cause of action against the Company, (c) owes any money to, or is owed any money by, the Company or (d) has any other rights with respect to the Company other than its right to receive the applicable pro rata portion of the Merger Consideration according to the formula set forth in the Payout Schedule.

3.23 Approval by Stockholders. The Stockholders' Written Consent when executed by the Required Stockholder Vote will be sufficient to authorize and approve the Merger pursuant to the Company Organizational Documents and Delaware Law. The documents, materials and notices (collectively, the "Disclosure Materials") prepared or to be prepared by the Company pursuant to Delaware Law, the Company Organizational Documents or otherwise in connection with obtaining the Required Stockholder Vote, including the Merger, and providing the required notices thereof, including the notice required pursuant to Section 262(d)(2) of Delaware Law, or otherwise relating to the transactions contemplated by this Agreement, including the Merger comply or, when prepared by the Company and distributed to the stockholders of the Company, will comply with Delaware

Law and the Company Organizational Documents and will not, at the time of distribution of the Disclosure Materials or at the Effective Time, contain any statement which, at such time, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they are made, not false or misleading; or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of proxies or written consents for the Stockholders' Written Consent which has become false or misleading.

3.24 Privacy. The Company is conducting its business in compliance in all material respects with all Applicable Laws governing privacy and the protection of personal information. The Company has a written privacy policy which governs the collection, use and disclosure of personal information and the Company is in compliance with such policy.

3.25 Powers of Attorney. There are no outstanding powers of attorney executed on behalf of the Company.

3.26 Size of Person Test. Now and up until the time of the Closing, the Company (a) is and will be its own ultimate parent entity as that term is defined in HSR Act, and (b) does not and will not satisfy the $10 million (as adjusted) prong of the size of person threshold test as determined under the HSR Act.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent represents and warrants to the Company, except (a) as set forth in the Parent Disclosure Letter or (b) as disclosed in the Parent SEC Reports filed or furnished on or prior to the date of this Agreement, the statements contained in this Article IV are true and correct as of the date hereof and as of the Closing (unless the particular statement speaks expressly as of a particular date, in which case it is true and correct only as of such date):

4.1 Organization, Standing and Power. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing, if applicable, under the Applicable Laws of the state in which it was incorporated.

4.2 Authority. Parent and Merger Sub have all requisite corporate power and authority to enter into this Agreement and to consummate the Merger. The execution and delivery by Parent and Merger Sub of this Agreement and the consummation by Parent and Merger Sub of the Merger have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub, and no other authorization or consent of Parent, Merger Sub or their respective stockholders is necessary. This Agreement has been duly executed and delivered by Parent and Merger Sub, and, assuming this Agreement constitutes the valid and binding obligation of the Company, this Agreement constitutes a valid and binding obligation of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar Applicable Laws affecting or relating to creditors' rights generally and general principles of equity, regardless of whether asserted in a proceeding in equity or at law.

4.3 Noncontravention. Except as set forth in Section 4.3 of the Parent Disclosure Letter, neither the execution and delivery by Parent and Merger Sub of this Agreement, nor the consummation by Parent or Merger Sub of any of the transactions contemplated hereby, will:

(a) conflict with or violate any provision of the Parent Organizational Documents;

(b) assuming the accuracy of the Company's representation in Section 3.26 of this Agreement, require on the part of Parent or Merger Sub any registration, declaration or filing with, or any permit, order, authorization, consent or approval of, any Governmental Entity, except for (i) compliance with trade regulation Applicable Laws and (ii) any registration, declaration, filing, permit, order, authorization, consent or approval which if not made or obtained could not reasonably be expected to result in a material adverse effect on Parent's or Merger Sub's ability to consummate the Merger or any of the other transactions contemplated hereby;

(c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party any right to terminate or modify, or require any notice, consent or waiver under, any Contract to which Parent or Merger Sub is a party or by which Parent or Merger Sub is bound, except for that which would not reasonably be expected to result in a material adverse effect on Parent's or Merger Sub's ability to consummate the Merger or any of the other transactions contemplated hereby;

(d) violate any order, writ, injunction or decree applicable to Parent or Merger Sub or any of their respective material Assets, except for any violation that could not reasonably be expected to result in a material adverse effect on Parent's or Merger Sub's ability to consummate the Merger or any of the other transactions contemplated hereby;

(e) assuming the accuracy of the Company's representation in Section 3.26 of this Agreement, violate any Applicable Law applicable to Parent or Merger Sub or any of their respective material Assets, except for any violation that could not reasonably be expected to result in a material adverse effect on Parent's or Merger Sub's ability to consummate the Merger or any of the other transactions contemplated hereby; or

(f) require a vote of the holders of any class or series of the Parent's capital stock or other securities.

4.4 Litigation. As of the date of this Agreement, there are no Claims pending or, to the knowledge of Parent, threatened against Parent or Merger Sub before any Governmental Entity or any arbitrator that seeks to restrain or enjoin the consummation of the transactions contemplated by this Agreement or which would reasonably be expected to have a material adverse effect on Parent's or Merger Sub's ability to consummate the Merger or any of the other transactions contemplated hereby and satisfy its obligations in connection therewith (including payment of the Contingent Consideration as contemplated by this Agreement).

4.5 Merger Sub. Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement. Merger Sub has not incurred nor

will it incur any liabilities or obligations, except those incurred in connection with its organization and with the negotiation of this Agreement and the performance of its obligations hereunder and the consummation of the transactions contemplated by this Agreement, including the Merger. Except as set forth in Section 4.5 of the Parent Disclosure Letter, as of the date of this Agreement, all of the issued and outstanding capital stock of Merger Sub is owned beneficially and of record by Parent, free and clear of all liens (other than those created by this Agreement and the transactions contemplated by this Agreement).

4.6 Sufficiency of Funds. As of the Closing, Parent will have available to it sufficient funds to satisfy the Closing Merger Consideration.

ARTICLE V
ADDITIONAL AGREEMENTS

5.1 Confidentiality; Access.

(a) The Parties acknowledge that the Company and Parent have previously executed that certain confidentiality agreement, dated January 5, 2018 (the "Confidentiality Agreement"). Except as may be required by Applicable Law, any listing agreement with any applicable national or regional securities exchange, as required to be disclosed in filings or other submissions to Governmental Entities made to obtain the Necessary Consent, or pursuant to the terms and provisions of the Confidentiality Agreement, the Parties (other than the Stockholders' Agent) will hold any information which is non-public in confidence in accordance with the terms of the Confidentiality Agreement and, in the event this Agreement is terminated for any reason, the Parties shall promptly return or destroy such information in accordance with the Confidentiality Agreement.

(b) Subject to Applicable Law and upon reasonable notice, the Company shall afford Parent and its employees, attorneys, accountants, consultants and other representatives reasonable access, during normal business hours during the period prior to the Effective Time, to its properties, books, contracts and records and appropriate individuals as Parent may reasonably request (including employees, attorneys, accountants, consultants and other professionals), and during such period, the Company shall furnish promptly to Parent such information concerning its business, properties and personnel as Parent may reasonably request; *provided*, *however*, that the Company may restrict the foregoing access to the extent that (i) any law, treaty, rule or regulation of any Governmental Entity applicable to such Party requires such Party or its Subsidiaries to restrict or prohibit access to any such properties or information to Parent, or (ii) such access would be in breach of any confidentiality obligation, commitment or provision by which the Company is bound or affected as of the date hereof, which confidentiality obligation, commitment or provision shall be disclosed to Parent. With respect to the furnishing by the Company of competitively sensitive information, outside antitrust counsel will be consulted prior to the exchange of such information, and such information shall be exchanged only with the consent of such counsel and pursuant to any safeguards (such as clean teams or redactions) that such counsel finds to be necessary. In addition, any information obtained from the Company pursuant to the access contemplated by this Section 5.1(b) shall be subject to the Confidentiality Agreement. Any access to any of the Company's facilities shall be subject to the Company's reasonable security measures and insurance requirements.

5.2 Public Disclosure. Parent and the Company shall consult with each other before issuing any press release or otherwise making any public statement or making any other public disclosure (whether or not in response to an inquiry) regarding the terms of this Agreement and the transactions contemplated hereby. Neither the Company nor Parent shall issue any press release or make any public statement or disclosure without the prior written approval of the other Party, except as required by Applicable Law or the rules or regulations of any applicable national or regional securities exchange or market. Notwithstanding the foregoing, the Company and Parent have agreed on a form of joint press release to be issued by Parent at the time of the execution of this Agreement. Notwithstanding anything in this Agreement to the contrary, following Closing and the public announcement of the Merger, the Stockholders' Agent shall be permitted to publicly announce that it has been engaged to serve as the Stockholders' Agent in connection with the Merger as long as such announcement does not disclose any of the other terms of the Merger or the other transactions contemplated herein.

5.3 Company 401(k) Plans; Employees.

(a) Prior to the date hereof, the Company has taken or caused to be taken all actions necessary to terminate any and all Company Employee Plans intended to include a Code Section 401(k) arrangement, effective no later than the day immediately preceding the date hereof. Prior to the date hereof, the Company provided Parent with evidence that such 401(k) plan(s) have been terminated (effective no later than the day immediately preceding the date hereof) pursuant to resolutions of the Company's board of directors.

(b) The Company will take any and all necessary actions to terminate the employment of each current Employee and officer effective as of the Effective Time.

5.4 Tax Matters.

(a) Transfer Taxes. All Transfer Taxes, arising out of, or in connection with, the transactions effected pursuant to this Agreement shall be borne equally by Parent and the Surviving Corporation on the one hand, and the Company Securityholders, on the other hand. The Party required to file any Tax Return related to Transfer Taxes shall file such Tax Return and pay any Transfer Taxes and the other Party or Parties shall reimburse the paying Party for its share of Transfer Taxes within ten (10) days of written request.

(b) Filing of Tax Returns After the Closing Date.

(i) Stockholders' Agent shall prepare or cause to be prepared all income Tax Returns of the Company for periods ending on or prior to the Closing Date. Such Tax Returns shall be prepared in accordance with the past practices and accounting methods of the Company unless otherwise required by Applicable Law. Stockholders' Agent shall provide Parent with a copy of each such Tax Return (and such supporting work papers as Parent may reasonably request) not less than thirty (30) days prior to the date on which such Tax Return is to be filed so that Parent may

review and comment on each such Tax Return prior to filing. Stockholders' Agent shall make revisions to any Tax Return prepared pursuant to this Section 5.4(b)(i) as reasonably requested by Parent. If there is a disagreement as to whether revisions requested by Parent should be included in any such Tax Return, the disagreement shall be submitted to the Neutral Auditor for resolution (the expenses of which shall be shared in a manner similar to that set forth in Section 2.15(b)). Parent shall timely file (after taking into consideration any extensions available) with the applicable Governmental Entity such Tax Returns as finally prepared pursuant to this Section 5.4(b)(i) (including the resolution of the Neutral Auditor, if applicable). By no later than three (3) Business Days after a Tax Return is filed pursuant to this Section 5.4(b)(i), Parent shall be reimbursed out of the Escrow Fund for the Taxes as shown on such Tax Return.

(ii) Parent shall prepare, or cause to be prepared, all (i) non-income Tax Returns of the Company for all periods ending on or prior to the Closing Date that are first due after the Closing Date (other than any such Tax Returns which have already been filed on or before the Closing Date) and (ii) all Tax Returns for all periods beginning on or before the Closing Date and ending after the Closing Date ("Straddle Periods"); such Tax Returns shall be prepared in accordance with the past practices and accounting methods of the Company unless otherwise required by Applicable Law. Parent shall provide the Stockholders' Agent with a copy of each such Tax Return (and such supporting work papers as the Stockholders' Agent may reasonably request) a reasonable amount of time prior to the date on which such Tax Return is to be filed (such reasonable amount of time to be not less than thirty (30) days in the case of income Tax Returns and, if practically feasible, no less than ten (10) days in the case of other Tax Returns) so that the Stockholders' Agent may review and comment on each such Tax Return prior to filing. At the same time Parent provides a copy of a Tax Return for a Straddle Period to the Stockholders' Agent pursuant to the preceding sentence, Parent shall also provide to the Stockholders' Agent for the Stockholders' Agent's review and approval an allocation of the Tax for the Straddle Period between the portion of the Straddle Period ending on the Closing Date and the remaining portion of the Straddle Period, determined in accordance with the provisions of Section 9.2(a). Parent shall make revisions to any Tax Return prepared pursuant to this Section 5.4(b)(ii), or the allocation described in the preceding sentence, as reasonably requested by Stockholders' Agent. If there is a disagreement as to whether revisions requested by Stockholders' Agent should be included in any such Tax Return or as to the allocation described in the second preceding sentence, the disagreement shall be submitted to the Neutral Auditor for resolution (the expenses of which shall be shared in a manner similar to that set forth in Section 2.15(b)). Parent shall timely file (after taking into consideration any extensions available) with the applicable Governmental Entity such Tax Returns as finally prepared pursuant to this Section 5.4(b)(ii) (including the resolution of the Neutral Auditor, if applicable). By no later than three (3) Business Days after a Tax Return is filed pursuant to this Section 5.4(b)(ii), Parent shall be reimbursed out of the Escrow Account for the Taxes due with respect to such Tax Return to the extent that such Taxes are allocable to a Tax period or, pursuant to Section 9.2(a), to a portion of a Straddle Period, ended on or before the Closing Date. Notwithstanding anything in this Section 5.4(b)(ii), any Straddle Period Tax Returns that are income Tax Returns shall be prepared and filed in a manner consistent with those income Tax Returns prepared and filed pursuant to Section 5.4(b)(i).

(c) Cooperation on Tax Matters. The Company, Parent and the Stockholders' Agent shall cooperate fully (and shall cause their Affiliates to cooperate fully), as and to the extent reasonably requested by the other Parties, in connection with the filing of Tax Returns, Tax audits, Tax proceedings or other Tax-related Claims. Such cooperation and information shall include providing copies of all relevant portions of relevant Tax Returns and related documents, and making its employees available, to the extent reasonably requested.

(d) The federal income Tax year of the Company shall end as of the close of business on the Closing Date and the Company shall join the consolidated federal income Tax group of which Parent is the parent on the day after the Closing Date. If the Company is permitted but not required under applicable state, local or foreign Applicable Law to treat the Closing Date as the last day of a taxable period, then the Parties shall elect with the relevant Governmental Entity to, or otherwise treat, that day as the last day of a taxable period.

5.5 Amended Tax Returns. Except with the written consent of the Stockholders' Agent (which consent shall not be unreasonably withheld, conditioned or delayed), Parent shall not, nor shall it permit or cause any of its Affiliates or the Company to, amend, file (including undertaking any voluntary disclosure or similar process), refile, revoke or otherwise modify any Tax Return or Tax election of the Company with respect to Tax periods that begin on or prior to the Closing Date, or that reasonably could be expected to affect Tax periods that begin on or prior to the Closing Date.

5.6 Closing Date Items/No 338 Election. None of Parent, the Company or any of their respective Affiliates shall cause or permit to be made any extraordinary transaction or event after the Closing on the Closing Date that would result in any increased Tax Liability for which indemnification would be provided pursuant to this Agreement. None of Parent, the Company or any of their respective Affiliates shall cause or permit to be filed any election under Section 338 or Section 336 of the Code in connection with the Merger.

5.7 Mitigation. The Parties agree to use reasonable efforts to obtain any certificate or other document from any person as may be reasonably necessary to mitigate, reduce or eliminate any Tax that could otherwise be imposed with respect to the Company with respect to any taxable period or portion thereof ending on or before the Closing Date.

5.8 Tax Treatment of Merger. The Parties agree, for Tax purposes, to treat payment of the Merger Consideration to the Company Securityholders (other than to holders of Company Options in their capacities as such or with respect to any portion thereof required to be treated as imputed interest under the Code or Applicable Law) as consideration paid for the Company Capital Stock and Warrants, and the Parties shall report on all Tax Returns in a manner consistent therewith and not take any position inconsistent therewith in any proceeding.

5.9 Indemnification of Officers and Directors of the Company.

(a) For a period of six (6) years from and after the Effective Time, subject to Section 5.9(b), the Surviving Corporation agrees to honor provisions regarding indemnification of and the advancement of expenses to Covered Persons that are no less favorable to the Covered Persons than the provisions contained in the Company Organizational Documents as in effect

immediately prior to the Effective Time; *provided*, *however*, that in no event shall any indemnification or reimbursement or advancement of expenses be provided under any circumstances in respect of acts or omissions related to this Agreement or the Merger. For purposes of this Section 5.9, "Covered Person" shall mean any person who is serving (as of immediately prior to the Effective Time) as a director or officer of the Company.

(b) At or before the Effective Time, the Company shall purchase for the benefit of the Covered Persons a directors' and officers' liability insurance "tail" or "run-off" policy of at least the same coverage and amounts as the Company's current policies of directors' and officers' liability insurance and containing terms and conditions, in the aggregate, no less advantageous to the insured with respect to Claims arising from facts or events that occurred on or before the Effective Time and which covers a period of six (6) years from and after the Effective Time.

(c) Notwithstanding anything to the contrary in this Agreement, for purposes of the calculation of the Closing Merger Consideration, fifty percent (50%) of the premium paid to purchase the above-referenced "tail" or "run-off" policy shall be the responsibility of the Company (and treated as a Company Transaction Expense hereunder), and fifty percent (50%) of such premium shall be the responsibility of Parent (and Parent shall pay, or cause to be paid, such amount at Closing to secure such policy). For the avoidance of doubt, nothing contained in this Section 5.9 shall operate to release or otherwise limit any obligations of the Company Securityholders arising under this Agreement, including the indemnification obligations in Article IX.

5.10 Product Liability Insurance.

(a) At or before the Effective Time, the Company shall purchase a products liability "tail" or "run-off" policy of at least the same coverage and amounts as the Company's current products liability insurance and containing terms and conditions, in the aggregate, no less advantageous to the Company with respect to Claims arising from facts or events that occurred on or before the Effective Time and which covers a period of six (6) years from and after the Effective Time.

(b) Notwithstanding anything to the contrary in this Agreement, for purposes of the calculation of the Closing Merger Consideration, fifty percent (50%) of the premium paid to purchase the above-referenced "tail" or "run-off" policy shall be the responsibility of the Company (and treated as a Company Transaction Expense hereunder), and fifty percent (50%) of such premium shall be the responsibility of Parent (and Parent shall pay, or cause to be paid, such amount at Closing to secure such policy). For the avoidance of doubt, nothing contained in this Section 5.10 shall operate to release or otherwise limit any obligations of the Company Securityholders arising under this Agreement, including the indemnification obligations in Article IX.

5.11 Takeover Statute. If any Takeover Statute is or may become applicable to the Merger or the other transactions contemplated by this Agreement, the Company and its board of directors shall grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement or by the Merger and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

5.12 Stockholder Vote Concerning Code Section 280G. Prior to the date hereof, to the extent necessary to avoid the application of Section 280G of the Code and the Treasury regulations promulgated thereunder, the Company shall have solicited and received the approval of the holders of its voting securities, to the extent and in the manner required under Section 280G(b)(5)(B) of the Code and the regulations promulgated thereunder (the "280G Shareholder Vote"), and, if necessary, shall have solicited and received the waiver of each Disqualified Individual to waive any payments in respect of the Merger that would not be deductible pursuant to Section 280G of the Code, if the 280G Shareholder Vote fails the approval requirements set out in Section 280G(b)(5) of the Code and the applicable regulations promulgated thereunder. Prior to providing the Company's Disqualified Individuals and stockholders with any materials necessary to comply with such requirements, the Company has provided a copy of such materials to Parent in reasonably sufficient time to allow Parent to comment thereon and has considered any such comments in good faith.

5.13 Merger Sub Compliance. Parent shall cause Merger Sub to comply with all of Merger Sub's obligations under or relating to this Agreement. Merger Sub shall not engage in any business which is not in connection with the merger with and into the Company pursuant to this Agreement.

5.14 Stockholder Approval.

(a) The Company agrees to use its commercially reasonable efforts to cause all Company Stockholders that have not previously executed the Stockholders' Written Consent to adopt this Agreement and approve the Merger by executing and joining the Stockholders' Written Consent. The Company shall provide the Company Stockholders with the Disclosure Materials as shall be required by Applicable Law.

(b) The Company shall submit to Parent the form of any written notice and other Disclosure Materials to be transmitted to stockholders pursuant to paragraphs (a) and (b) above prior to delivery thereof to the stockholders and shall not transmit to its stockholders any such notice or disclosure material to which Parent reasonably objects.

5.15 Payout Schedule. At least five (5) Business Days prior to the scheduled Closing Date, the Company shall have prepared and delivered to Parent a schedule and reasonable supporting documentation (collectively, the "Payout Schedule") which shall set forth (a) a calculation of the portion of the Merger Consideration payable to each Company Securityholder under Article II, or, with respect to payments of Contingent Consideration where such calculations cannot be made, formulas for completing such calculations upon determination of the Contingent Consideration to be paid, (b) an amount to be distributed to the Company Securityholders as a whole equal to the Estimated Closing Merger Consideration (including the amounts for each of the elements of the Estimated Closing Merger Consideration, such as the Estimated Working Capital, the Estimated Closing Cash, the Estimated Closing Debt and the Estimated Unpaid Company Transaction Expenses), (c) by Company Securityholder, an amount to be distributed to each such Company Securityholder equal to the portion of the Estimated Closing Merger Consideration each such Company Securityholder shall be entitled to receive, and (d) by Company Securityholder, an amount to be withheld from each such Company Securityholder's portion of the Estimated Closing Merger Consideration due to applicable payroll, income tax or other withholding Taxes as of the Closing Date, together with a certificate of the Chief Executive Officer of the Company certifying that the Payout Schedule is true and correct in all respects. The Company shall also provide Parent with such information as Parent may reasonably request to verify such calculations.

5.16 Post-Closing Fees. The Company Securityholders shall be responsible for, and pay, the fees and expenses of the Stockholders' Agent and Payments Administrator.

ARTICLE VI
CONDITIONS TO THE MERGER

6.1 Conditions to Obligation of Each Party to Effect the Merger. The respective obligations of Parent and Merger Sub, on the one hand, and the Company, on the other hand, to effect the Merger and otherwise to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions (it being understood that any one or more of the following conditions may be waived by the written agreement of Parent and the Company, unless prohibited by Applicable Law):

(a) Litigation. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated or entered any Applicable Law (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins or otherwise prohibits consummation of the Merger (collectively, an "Order"), and there shall not be any Applicable Law enacted or deemed applicable to the transactions contemplated hereby that makes consummation of such transactions illegal.

(b) Company Stockholder Approval. This Agreement shall have been adopted by the Required Stockholder Vote of the Company Stockholders in accordance with Applicable Law and the Company Organizational Documents.

6.2 Additional Conditions to the Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger and otherwise to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions (it being understood that any one or more of the following conditions may be waived by the written agreement of Parent):

(a) Representations and Warranties. Each of the representations and warranties of the Company in this Agreement (i) shall have been accurate in all respects as of the date of this Agreement and (ii) shall be accurate in all respects as of the Closing as if made at the Closing (except to the extent any such representation or warranty speaks as of any other specific date, in which case such representation or warranty shall have been accurate in all respects as of such date); except where the failure of such representations and warranties to be so true and correct has not had and would not reasonably be expected to result in, individually or in the aggregate with any other failures of such representations and warranties to be true and correct, a Company Material Adverse Effect.

(b) Performance of Covenants. The Company shall have complied with and performed in all material respects all material covenants under this Agreement required to be complied with or performed by the Company at or prior to the Closing.

(c) No Company Material Adverse Effect. Following the date of this Agreement, no Company Material Adverse Effect shall have occurred and be continuing.

(d) Necessary Consent. The Necessary Consent and the consents described in Section 6.2(d) of the Company Disclosure Letter shall have been obtained and shall be in full force and effect.

(e) Consulting Agreements. The Consulting Agreements executed and delivered on the date of this Agreement shall be in full force and effect as of the Closing, and no breaches, disputes or repudiations by Cathy Gerlett of the Gerlett Consulting Agreement or David Tierney of the Tierney Consulting Agreement shall have occurred or be threatened to Parent.

(f) Closing Deliverables. The Company and the Stockholders' Agent and the Company Stockholders shall have delivered or caused to be delivered all closing deliveries set forth in Section 2.13.

6.3 Additional Conditions to Obligation of the Company. The obligation of the Company to effect the Merger and to otherwise consummate the transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions (it being understood that any one or more of the following conditions may be waived by the written agreement of the Company):

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub in this Agreement (i) shall have been accurate in all respects as of the date of this Agreement and (ii) shall be accurate in all respects as of the Closing as if made at the Closing (except to the extent any such representation or warranty speaks as of any other specific date, in which case such representation or warranty shall have been accurate in all respects as of such date); except where the failure of such representations and warranties to be so true and correct has not had and would not reasonably be expected to result in, individually or in the aggregate with any other failures of such representations and warranties to be true and correct, a material adverse effect on Parent's or Merger Sub's ability to consummate the Merger or any of the transactions contemplated hereby.

(b) Performance of Covenants. Parent and Merger Sub shall have each complied with and performed in all material respects all of their respective material covenants under this Agreement required to be complied with or performed by either of them at or prior to the Closing.

ARTICLE VII
TERMINATION

7.1 Termination. This Agreement may be terminated at any time prior to the Closing (with respect to Sections 7.1(b) through 7.1(d), by notice from the terminating Party to the other Party setting forth a brief description of the basis for termination):

(a) by the mutual written consent of Parent and the Company;

(b) by either Parent or the Company if the Merger shall not have been consummated by 11:59 P.M. (Eastern time) on March 29, 2018 or such other date that the Company and Parent may agree upon in writing; *provided, however*, that the right to terminate this Agreement under this Section 7.1(b) shall not be available to any Party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by the Company if (i) there is an inaccuracy in any of the representations or warranties of Parent or Merger Sub in this Agreement such that the condition set forth in Section 6.3(a) would not be satisfied, or there has been a breach by Parent or Merger Sub of any of their respective covenants in this Agreement such that the condition set forth in Section 6.3(b) would not be satisfied, (ii) the Company shall have delivered to Parent a written notice of such inaccuracy or breach, (iii) at least 30 days shall have elapsed since the delivery of such notice without such inaccuracy or breach having been cured and (iv) the Company is not in material breach of this Agreement;

(d) by Parent if (i) there is an inaccuracy in any of the representations or warranties of the Company in this Agreement such that the condition set forth in Section 6.2(a) would not be satisfied, or there has been a breach by the Company of any of its covenants in this Agreement such that the condition set forth in Section 6.2(b) would not be satisfied, (ii) Parent shall have delivered to the Company a written notice of such inaccuracy or breach, (iii) at least 30 days shall have elapsed since the delivery of such notice without such inaccuracy or breach having been cured and (iv) neither Parent nor Merger Sub is in material breach of this Agreement; and

(e) by Parent if the Stockholders' Written Consent shall not have been delivered to Parent within two (2) hours after the execution of this Agreement.

7.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall be of no further force or effect, and there shall be no liability on the part of Parent, the Company, Merger Sub or their respective officers, directors or stockholders, except to the extent that such liability results from the willful breach by a Party of any of its covenants set forth in this Agreement; *provided, however*, that the provisions of Section 5.1(a), Section 5.2, this Section 7.2 and Article X shall remain in full force and effect and survive any termination of this Agreement.

ARTICLE VIII
CONTINGENT CONSIDERATION

8.1 Development Milestone . Within ten (10) days following the first occurrence of the event described below for the Lead Product (the "Development Milestone"), Parent shall provide written notice to the Stockholders' Agent noting the achievement of the Development Milestone and the date thereof, and Parent shall pay to the Payments Administrator, for the benefit of the Company Securityholders, the amount set forth below within thirty (30) days after the date set forth in Parent's notice under this Section 8.1(a) (such amount, the "Development Milestone Payment").

Development Milestone	Development Milestone Payment
First Commercial Sale of the Lead Product in the United States	$ 15,000,000

8.2 Sales Milestones.

(a) For purposes of this Agreement, (i) the term "Sales Threshold" shall mean, with respect to a Reimbursement Year, Aggregate Annual Consideration of at least the amounts set forth in the table below under the column entitled "Sales Thresholds," and (ii) the term "Sales Milestone Payment" shall mean, with respect to a given Sales Threshold but subject to Section 8.2(b), the cash amount set forth opposite such Sales Threshold in the table below under the column entitled "Sales Milestone Payment."

Sales Thresholds	Sales Milestone Payment
Aggregate Annual Consideration of $75,000,000	$ 20,000,000
Aggregate Annual Consideration of $150,000,000	$ 20,000,000
Aggregate Annual Consideration of $250,000,000	$ 25,000,000
Aggregate Annual Consideration of $400,000,000	$ 30,000,000

(b) Sales Milestone Payments on Aggregate Annual Consideration Earned During the First Three Reimbursement Years.

(i) If, as of the Initial Testing Date, (A) Parent has achieved Aggregate Annual Consideration in any Reimbursement Year prior to the Initial Testing Date between $300,000,000 and $399,999,999, and (B) immediately following the Initial Testing Date, the Lead Product will no longer be separately reimbursable by fee-for-service Medicare payments to hospital outpatient departments (i.e., reimbursable separate from the cataract surgery bundle), then Parent shall, within sixty (60) days after the end of the Initial Testing Date, (1) provide written notice to the Stockholders' Agent of the threshold achieved and (2) pay to the Payments Administrator, for the benefit of the Company Securityholders, a one-time cash payment of $10,000,000. Notwithstanding the foregoing, if the conditions set forth in Section 8.2(b)(ii) are achieved, then Parent shall only be subject to Section 8.2(b)(ii) and shall have no obligation to comply with this Section 8.2(b)(i), including without limitation, the payment of $10,000,000.

(ii) If, as of the Initial Testing Date, (A) Parent has achieved Aggregate Annual Consideration in any Reimbursement Year prior to the Initial Testing Date of at least $400,000,000, and (B) immediately following the Initial Testing Date, the Lead Product will no longer be separately reimbursable by fee-for-service Medicare payments to hospital outpatient departments (i.e., reimbursable separate from the cataract surgery bundle), then Parent shall, within sixty days (60) after the end of the Initial Testing Date, (1) provide written notice to the Stockholders' Agent of the threshold achieved and (2) pay to the Payments Administrator, for the benefit of the Company Securityholders, a one-time cash payment of $15,000,000.

(iii) The Parties acknowledge and agree that if Parent is required to make either the $10,000,000 payment or the $15,000,000 payment pursuant to this Section 8.2(b), then Parent shall not be required to make any additional Sales Milestone Payments referenced in this Section 8.2.

(c) Sales Milestone Payments as of the Second Testing Date for Sales Thresholds Achieved Prior to the Second Testing Date. If, as of the Second Testing Date, (i) Parent has achieved Aggregate Annual Consideration in respect of the Lead Product in any Reimbursement Year in an amount equal to or in excess of any of the Sales Thresholds (such Sales Thresholds achieved prior to the Second Testing Date, the "Second Testing Sales Thresholds"), and (ii) for the entire period of time during the first four (4) Reimbursement Years, the Lead Product was separately reimbursable by fee-for-service Medicare payments to hospital outpatient departments (i.e., reimbursable separate from the cataract surgery bundle), then, in the case of clauses (i) and (ii), the Company Securityholders shall be entitled to fifty percent (50%) of the aggregate amount of the Sales Milestone Payments associated with achieving the Second Testing Sales Thresholds (the "Modified Sales Milestone Payment"), and Parent shall provide written notice to the Stockholders' Agent identifying the relevant Second Testing Sales Thresholds achieved and the amount of the Modified Sales Milestone Payment within sixty (60) days after the Second Testing Date. At Parent's option, Parent shall pay the Modified Sales Milestone Payment in one lump sum payment within sixty (60) after the Second Testing Date or as follows:

(i) if Parent achieved only one (1) Second Testing Sales Threshold, then Parent shall pay to the Payments Administrator, for the benefit of the Company Securityholders, the Modified Sales Milestone Payment in one (1) payment within sixty (60) days after the Second Testing Date (the "Second Testing Payment Date");

(ii) if Parent achieved only two (2) Second Testing Sales Thresholds, then Parent shall pay to the Payments Administrator, for the benefit of the Company Securityholders, the Modified Sales Milestone Payment in two (2) equal annual payments with the first payment due by the Second Testing Payment Date and the second payment due within sixty (60) days after the first anniversary of the Second Testing Date;

(iii) if Parent achieved only three (3) Second Testing Sales Thresholds, then Parent shall pay to the Payments Administrator, for the benefit of the Company Securityholders, the Modified Sales Milestone Payment in three (3) equal annual payments with the first payment due by the Second Testing Payment Date, the second payment due within sixty (60) days after the first anniversary of the Second Testing Date and the third payment due within sixty (60) days after the second anniversary of the Second Testing Date; or

(iv) if Parent achieved four (4) Second Testing Sales Thresholds, then Parent shall pay to the Payments Administrator, for the benefit of the Company Securityholders, the Modified Sales Milestone Payment in four (4) equal annual payments with the first payment due by the Second Testing Payment Date, the second payment due within sixty (60) days after the first anniversary of the Second Testing Date, the third payment due within sixty (60) days after the second anniversary of the Second Testing Date and the fourth payment due within sixty (60) days after the third anniversary of the Second Testing Date.

Notwithstanding anything to the contrary set forth in this Section 8.2(c), interest shall accrue at a rate of ten percent (10%) per annum on any Modified Sales Milestone Payments paid after the Second Testing Payment Date until the Modified Sales Milestone Payment is paid in full, which interest shall be payable on each applicable payment date. For the avoidance of doubt, any interest on such payments shall be payable under this section and not under any other section of this Agreement.

(d) Sales Milestone Payments as of the Third Testing Date for Sales Thresholds Achieved Prior to the Second Testing Date. If, as of the Third Testing Date, (i) Parent has achieved one or more of the Second Testing Sales Thresholds as of the Second Testing Date, and (ii) for the entire period of time during the first five (5) Reimbursement Years, the Lead Product was separately reimbursable by fee-for-service Medicare payments to hospital outpatient departments (i.e., reimbursable separate from the cataract surgery bundle), then, in the case of clauses (i) and (ii), the Company Securityholders shall be entitled to an additional fifty percent (50%) of the aggregate amount of the Sales Milestone Payments associated with achieving the Second Testing Sales Thresholds prior to the Second Testing Date (the "Catch-Up Sales Milestone Payments"), and Parent shall, within sixty (60) days after the Third Testing Date, (A) provide written notice to the Stockholders' Agent identifying the relevant Second Testing Sales Thresholds achieved and the amount of the Catch-Up Sales Milestone Payment and (B) pay to the Payments Administrator for the benefit of the Company Securityholders, the Catch-Up Sales Milestone Payment and any outstanding Modified Sales Milestone Payments (and accrued but unpaid interest thereon) not otherwise paid pursuant to Section 8.2(c) in one lump sum payment.

(e) Sales Milestone Payments as of the Third Testing Date for Sales Thresholds Achieved in the Fifth Reimbursement Year. If, as of the Third Testing Date, (i) Parent has achieved Aggregate Annual Consideration in respect of the Lead Product in the fifth (5^{th}) Reimbursement Year in an amount equal to or in excess of any of the previously unmet Sales Thresholds (such Sales Thresholds achieved, the "Third Testing Sales Thresholds"), and (ii) for the entire period of time during the first five (5) Reimbursement Years, the Lead Product was separately reimbursable by fee-for-service Medicare payments to hospital outpatient departments (i.e., reimbursable separate from the cataract surgery bundle), then, in the case of clauses (i) and (ii), Parent shall, within sixty (60) days after the Third Testing Date, (A) provide written notice to the Stockholders' Agent identifying the relevant Sales Threshold achieved and (B) pay to the Payments Administrator, for the benefit of the Company Securityholders, the Sales Milestone Payments associated with achieving the Third Testing Sales Thresholds less the sum of any Modified Sales Milestone Payments or Catch-Up Sales Milestone Payments previously paid or payable (the "Third Testing Sales Milestone Payment").

(f) Sales Milestone Payments for Sales Thresholds Achieved after the Third Testing Date. If (i) Parent has achieved Aggregate Annual Consideration in respect of the Lead Product in any Reimbursement Year following the Third Testing Date in an amount equal to or in excess of any of the previously unmet Sales Thresholds (such Sales Thresholds achieved, the "Future Sales Thresholds"), and (ii) for the entire period of time during the first five (5) Reimbursement Years, the Lead Product was separately reimbursable by fee-for-service Medicare payments to hospital outpatient departments (i.e., reimbursable separate from the cataract surgery bundle), then, in the case of clauses (i) and (ii), Parent shall, within sixty (60) days after the end of a Reimbursement Year in which the relevant Sales Threshold has been achieved, (A) provide written notice to the Stockholders' Agent identifying the relevant Sales Threshold achieved

and (B) pay to the Payments Administrator, for the benefit of the Company Securityholders, an aggregate amount of the Sales Milestone Payments associated with achieving the Future Sales Thresholds less the sum of any Modified Sales Milestone Payments, Catch-Up Sales Milestone Payments and Third Testing Sales Milestone Payments previously paid or payable (the "Future Sales Milestone Payment").

(g) For the avoidance of doubt, each Sales Milestone Payment is payable a maximum of one time only, regardless of the number of Reimbursement Years in which a particular Sales Threshold is achieved.

8.3 Earn-Out Consideration.

(a) Lead Product Earn-Out. Subject to the remainder of this Section 8.3, Parent shall pay to the Payments Administrator, for the benefit of the Company Securityholders, within sixty (60) days following the end of each Calendar Quarter earn-out payments on Aggregate Lead Product Net Sales on a country-by-country basis equal to (i) twelve percent (12%) (the "Lead Product Earn-Out Rate") multiplied by the Aggregate Lead Product Net Sales, less (ii) the Company Share of Pediatric Trial Costs (the "Lead Product Earn-Out Payments").

Aggregate Lead Product Net Sales	**Lead Product Earn-Out Rate (% of Aggregate Lead Product Net Sales)**
Aggregate Lead Product Net Sales up to and including $200,000,000	12%

(b) Increase in Lead Product Earn-Out Rate. Notwithstanding Section 8.3(a), if the Aggregate Annual Consideration exceeds $200,000,000 in any Reimbursement Year, Parent shall pay Lead Product Earn-Out Payments on Aggregate Lead Product Net Sales in such Reimbursement Year at the Lead Product Earn-Out Rate of 16% beginning in the Calendar Quarter in which Aggregate Annual Consideration exceeded $200,000,000; *provided*, that the Company shall pay the Lead Product Earn-Out Rate of 12% on Aggregate Lead Product Net Sales prior to the Calendar Quarter in which Aggregate Annual Consideration exceeded $200,000,000.

(c) Other Products Earn-Out. Parent shall pay to the Payments Administrator, for the benefit of the Company Securityholders, within sixty (60) days following the end of each Calendar Quarter earn-out payments on Aggregate Other Product Net Sales on a country-by-country basis equal to (i) three percent (3%) multiplied by the Aggregate Other Product Net Sales, less (ii) the Company Share of Pediatric Trial Costs (the "Other Product Earn-Out Payments").

(d) Earn-Out Term. Parent's obligation to pay Earn-Out Payments with respect to Aggregate Lead Product Net Sales and Aggregate Other Product Net Sales, as applicable, for a particular product in a particular country shall commence upon the First Commercial Sale of such product in such country and shall expire for such product on a country-by-country basis on the later of (a) the expiration of the last Valid Claim of a Company Patent covering such product in such country, and (b) the date that is ten (10) years following the First Commercial Sale of such product in such country (each, an "Earn-Out Term"). Upon the expiration of the Earn-Out Term for a particular product in a particular country, the Earn-Out Payments will become fully paid up with respect to such product in such country.

(e) Generic Entry. If at any time in a given country with respect to the Lead Product or Other Product, there is competition for such product in such country from a Generic Version of such product, then Parent's obligation to pay Earn-Out Payments with respect to such product in such country shall be reduced by fifty percent (50%) effective upon the first date such competition exists with respect to such Product in such country. For the avoidance of doubt, if Parent has overpaid Earn-Out Payments during any Calendar Quarter in which it is later determined that competition from a Generic Version existed, then Parent will have the right to deduct from Earn-Out Payments payable in future periods any such overpayment, until such time when the overpayment is fully recouped by Parent.

8.4 Partnering Income. On a License-by-License basis, but not including the United States or any country where Parent is directly commercializing the Lead Product or Other Product (and therefore Parent is obligated to pay Earn-Out Payments on Aggregate Lead Product Net Sales or Aggregate Other Product Net Sales pursuant to Section 8.3), Parent will pay to the Payments Administrator, for the benefit of the Company Securityholders, (a) (i) twenty percent (20%) of all Partnering Income with respect to the Lead Product and (ii) five percent (5%) of all Partnering Income with respect to any Other Product, in each case, actually received by Parent and its Affiliates for the grant of such License, less (b) the Company Share of Pediatric Trial Costs (the "Company Share of Partnering Income"). For the avoidance of doubt, Parent shall have no obligation to pay any portion of Partnering Income after the expiration of the last Valid Claim of a Company Patent covering such product in such country.

8.5 Pediatric Trial Costs. For the avoidance of doubt, (a) under no circumstance shall the calculation of Lead Product Earn-Out Payments, Other Product Earn-Out Payments, or the Company Share of Partnering Income result in a negative value or require a payment to Parent or its Affiliates, and (b) if the deduction of the Company Share of Pediatric Trial Costs under Section 8.3(a), Section 8.3(c), or Section 8.4 would result in a negative value, only that portion of the Outstanding Pediatric Trial Costs that results in Lead Product Earn-Out Payments, Other Product Earn-Out Payments, or the Company Share of Partnering Income of $0 in a given Calendar Quarter shall be used in the calculation of the Company Share of Pediatric Trial Costs with respect to such payment to the Payments Administrator for the benefit of the Company Securityholders in the applicable Calendar Quarter, and any additional portion of the Outstanding Pediatric Trial Costs shall be (i) used in the calculation of a different payment under Section 8.3(a), Section 8.3(c), or Section 8.4 to the Payments Administrator for the benefit of the Company Securityholders in the applicable Calendar Quarter, or (ii) rolled forward and used in the calculation of the Company Share of Pediatric Trial Costs in the subsequent Calendar Quarter until there are no remaining Outstanding Pediatric Trial Costs. For purposes of allocating the deduction of the Company Share of Pediatric Trial Costs under Section 8.3(a), Section 8.3(c), or Section 8.4, the deduction shall first be made to the applicable Lead Product Earn-Out Payments, if any, then the Company Share of Pediatric Trial Costs, if any, and then the Other Product Earn-Out Payments, if any. Notwithstanding anything to the contrary, the Company Share of Pediatric Trial Costs is capped at $2,000,000, and once $2,000,000 in the aggregate of Company Share of Pediatric Trial Costs has been deducted pursuant to Section 8.3(a), Section 8.3(c), and Section 8.4, no additional Pediatric Trial Costs shall be deducted when calculating Lead Product Earn-Out Payments, Other Product Earn-Out Payments, or the Company Share of Partnering Income.

8.6 Reports; Earn-Out Consideration and Pediatric Trial Costs. During the Term, Parent shall pay the Earn-Out Payments and the Company Share of Partnering Income due to the Company Securityholders under Article VIII within sixty (60) days after the end of each Calendar Quarter. Concurrent with payment, Parent shall make written reports to the Stockholders' Agent for the benefit of the Company Securityholders covering Aggregate Lead Product Net Sales, Aggregate Other Product Net Sales and aggregate Partnering Income received and Pediatric Trial Costs incurred during the preceding Calendar Quarter. Each such written report shall include reasonable detail as available providing a calculation of any Earn-Out Payments and the Company Share of Partnering Income due to the Company Securityholders including Pediatric Trial Costs (by vendor paid) and on a product-by-product basis (a) each element of Parent Net Sales and Licensee Net Sales, (b) the number of units sold by any of Parent, Surviving Corporation, any of their respective Affiliates or Licensees, (c) Partnering Income received by type (i.e. royalty, upfront payment, milestone payment, etc.), and (d) the applicable exchange rate as determined pursuant to Section 8.9.

8.7 Method of Payments. All cash payments due from Parent to the Payments Administrator under this Article VIII shall be paid in Dollars by wire transfer to a bank account designated in writing by the Payments Administrator. As promptly as practicable following receipt by the Payments Administrator of any Contingent Consideration pursuant to this Article VIII, Parent shall cause the Payments Administrator to pay to each Company Securityholder, by wire transfer of immediately available funds in the case of any cash payment (or by check as reasonably directed by such Person), such Person's pro rata portion of such Contingent Consideration in accordance with Article II and the formulas set forth in the Payout Schedule.

8.8 Audit. Parent shall keep and maintain and shall cause its Affiliates and Licensees to keep for three (3) years after the end of each Calendar Quarter complete and accurate records of Pediatric Trial Costs, sales of the Lead Product, Other Product, Licenses and Partnering Income and all calculations in sufficient detail to allow the Stockholders' Agent to confirm the accuracy of payments and reports made under Sections 8.1, 8.2, 8.3 and 8.4 hereunder in respect of such Calendar Quarter. At the Stockholders' Agent's written request, Parent shall permit and cause its Affiliates to permit the Auditor to audit the relevant books and records of Parent and its Affiliates as may be reasonably necessary to confirm the accuracy of payments and reports made under Sections 8.1, 8.2, 8.3 and 8.4 hereunder in respect of the requested Calendar Quarters. Parent may require the Auditor to sign a standard non-disclosure agreement before providing the Auditor access to Parent's facilities or records. Parent shall make its records available for audit by the Auditor during regular business hours at such place or places where such records are customarily kept, upon thirty (30) days written notice from the Stockholders' Agent. Such audit right shall not be exercised by the Stockholders' Agent more than once in any Reimbursement Year and the records for a twelve (12) month period may not be audited more than once (except to the extent any audit conducted pursuant to this Section 8.8 revealed an underpayment of five percent (5%) or more in the reporting period, in which case such period will be subject to a second audit to verify compliance). All records made available for audit shall be deemed to be confidential information of Parent. Upon completion of the audit, the Auditor shall provide both Parent and the Stockholders' Agent a written report disclosing any discrepancies in the reports submitted by Parent or the Contingent Consideration paid by Parent,

and, in each case, the specific details concerning any discrepancies. If the Auditor concludes that additional amounts were due to the Company Securityholders, Parent will make such payments as is necessary for the Company Securityholders to have been paid the correct amount due under this Agreement for the audited periods plus interest as set forth in Section 8.10. If the Auditor concludes that lower amounts were due to the Company Securityholders, Parent shall have the right to offset such amounts against future Earn-Out Payments or Company Share of Partnering Income. The Stockholders' Agent (on behalf of the Company Securityholders) shall bear the full cost of such audit, except in the event that the results of the audit reveal an underpayment of payments under Sections 8.1, 8.2, 8.3 and 8.4 to the Company Securityholders under this Agreement of five percent (5%) or more over the period being audited, in which case documented and reasonable fees and expenses of the Auditor for such examination shall be paid by Parent. Parent shall cause applicable Licensees to comply with this Section 8.8 in respect of their Net Sales in the United States.

8.9 Currency. With respect to Partnering Income and sales of the Lead Product and Other Product invoiced in Dollars, Partnering Income and Aggregate Lead Product Net Sales and Aggregate Other Product Net Sales and the amounts due hereunder will be expressed in Dollars. With respect to Partnering Income and sales of the Lead Product and Other Product invoiced in a currency other than Dollars, Partnering Income, Aggregate Lead Product Net Sales and Aggregate Other Product Net Sales and amounts due hereunder will be reported in Dollars, calculated using the average exchange rates for the applicable Calendar Quarter as identified on the OANDA website.

8.10 Interest on Late Payment. Any amount owed by Parent to the Company Securityholders under this Agreement that is not paid to the Payments Administrator within the applicable time period set forth herein shall accrue interest at the rate of one and one third percent (1.33%) per month from the date due, or, if lower, the highest rate permitted under Applicable Laws. Where the late payment is caused by the Payments Administrator or Stockholders' Agent, including for reasons such as failure to communicate in a timely manner changes to bank details, or failure to respond to communications from Parent regarding the interpretation or dispute of the terms of such payment, then no interest will be payable by Parent in respect of such late payment.

8.11 Parent Diligence Obligations. Parent and the Surviving Corporation shall use Commercially Reasonable Efforts to directly or indirectly commercialize the Lead Product in the United States.

8.12 Miscellaneous. The rights and obligations of each Company Securityholder under this Agreement, including the right to receive payments under this Article VIII, (a) are purely contractual rights and not a security for purposes of any federal or state securities laws, (b) will not be represented by any form of certificate or instrument, (c) do not give Company Securityholders, their Affiliates or their successors or assigns any dividend rights, voting rights, liquidation rights, preemptive rights or other rights common to holders of Parent's equity securities and (d) are not transferrable, assignable or redeemable.

ARTICLE IX
SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

9.1 Survival of Representations and Warranties and Covenants. All representations and warranties of the Company contained in this Agreement shall survive the consummation of the Merger and continue until the Survival Termination Date, after which time such representations and warranties shall terminate and no further claims can be made; *provided, however*, that (a) the IP Reps shall survive the consummation of the Merger until the IP Termination Date and (b) the Fundamental Reps and the indemnity for Taxes of the Company or for which the Company may be otherwise liable pursuant to Section 9.2 shall survive the consummation of the Merger until sixty (60) calendar days after the expiration of the applicable statute of limitations. All covenants contained in this Agreement shall survive the consummation of the Merger and continue until the expiration of the applicable statute of limitations.

9.2 Indemnification.

(a) Subject to the terms of this Article IX, the Parent Indemnitees shall be indemnified, defended and held harmless, by the Company Securityholders solely through (x) the Escrow Fund and (y) the right to offset against the Contingent Consideration then owing or thereafter payable, if any (the "Indemnification Offset Payment"), from and against any and all Losses that are directly or indirectly suffered or incurred by any of the Parent Indemnitees, and that arise from or as a result of, or are directly or indirectly connected with, any of the following:

(i) any breach, untruth or inaccuracy of any representation or warranty of the Company contained in this Agreement, including any certificate delivered pursuant to Sections 2.13 or 6.2 of this Agreement, as of the date hereof or as of the Closing Date as though such representations or warranties were made on the Closing Date;

(ii) the breach or nonperformance by the Company of any of its covenants or agreements contained in this Agreement;

(iii) any Company Transaction Expenses, Closing Debt or Indebtedness of the Company to the extent not paid prior to Closing or deducted from the Closing Merger Consideration as contemplated in this Agreement;

(iv) any Claim relating to the exercise or purported exercise of appraisal or dissenter's rights under the Appraisal Rights Statute, as well as any obligation to pay additional consideration in respect of any Dissenting Shares, with such Losses to include the amount equal to the excess, if any, of (A) any amounts Parent, Merger Sub, the Company or the Surviving Corporation are required by a court of competent jurisdiction to pay, or pay in settlement, in respect of any Dissenting Shares (to the extent a Governmental Entity determines that the Appraisal Rights Statute is applicable to the Merger) over (B) the amount of the portion of the Merger Consideration into which such Dissenting Shares would have been converted in the Merger had such shares not been Dissenting Shares;

(v) any valid Claim (A) that any Company Option, Warrant or share of Preferred Stock or Company Common Stock entitles the holder thereof to anything other than the cash payments specified in Sections 2.6 or 2.12 (or that any (x) Company Option or Warrant was not validly cancelled and discharged in full prior to the Effective Time or (y) Convertible Debt was not validly converted into Series C Preferred Stock prior to the Effective Time and any Claim that any Convertible Debt entitled a holder (or former holder) of the Convertible Debt to any Merger Consideration), (B) made by or on behalf of any Company Securityholder, alleged Company Securityholder, or any other Person who asserts that they were entitled to any of the Merger Consideration (or any additional or incremental amount of Merger Consideration) or any other amounts by virtue of any Contract, ownership of Company Capital Stock or otherwise, (C) challenging, disputing or objecting to the Merger or the Merger Consideration or the amount of the portion of the Merger Consideration received or to be received by any such Company Securityholder or alleged Company Securityholder or (D) due to errors, inaccuracies or omissions in the Payout Schedule delivered by the Company to Parent as contemplated by this Agreement;

(vi) all Taxes of the Company or for which the Company may be otherwise liable attributable to any Tax period (or portion thereof) that ends on or before the Closing Date (a "Pre-Closing Tax Period") (*provided*, that, with respect to Taxes for a Straddle Period, the portion of any such Tax that is allocable to the Pre-Closing Tax Period shall be, (A) in the case of Taxes based on income, receipts, sales or expenses (e.g., payroll Taxes), the Tax that would be due with respect to the Straddle Period if such period ended on and included the Closing Date, and (B) in the case of all other Taxes, deemed to be the amount of such Taxes for the entire Straddle Period, multiplied by a fraction, the numerator of which is the number of days in the Straddle Period on or before the Closing Date and the denominator of which is the number of days in the entire Straddle Period) and *provided, further*, no indemnification shall be provided pursuant to this *Section 9.2(a)(vi)* and Losses shall not include any Taxes to the extent Parent is reimbursed for such Taxes pursuant to the last sentence of Section 5.4(b);

(vii) all Taxes imposed on the Company Securityholders arising from the Merger, the Option Surrender Agreements, the Warrant Surrender Agreements and the Amendment to Notes, except as otherwise provided by Section 5.4(a);

(viii) the treatment as an "excess parachute payment" (within the meaning of Code Section 280G(b)) of any payment made by the Company on or prior to the Closing Date or otherwise required to be paid by the Company, the Surviving Corporation or any of their respective Affiliates or Subsidiaries before, on or after the Closing Date pursuant to written or oral Contracts or agreements entered into on or prior to the Closing Date;

(ix) any broker's, financial advisor's, finder's or other fee or commission in connection with the transactions contemplated by this Agreement, in each case which have not been paid prior to the Closing and which have not been reflected in a reduction of the Closing Merger Consideration of this Agreement (but only to the extent of such reduction);

(x) the items listed in Section 9.2(a) of the Company Disclosure Letter; and

(xi) the continuation of the Company Option Plan and any Company Options after the Effective Time, as contemplated by Section 2.12(a), including without limitation any payments to be made to holders of Company Options following the exercise of any such Company Options after the Effective Time; and

(xii) any proceedings, demands or assessments incidental to any of the matters set forth in Section 9.2(a)(i) through (xi).

(b) Subject to the terms of this Article IX, the Company Securityholders and the Stockholders' Agent and their respective directors, officers and Affiliates (collectively, the "Seller Party Indemnitees") shall be indemnified, defended and held harmless by Parent and Surviving Corporation, on a joint and several basis, from and against any and all Losses that are directly or indirectly suffered or incurred by and of the Seller Party Indemnitees, and that arise from or as a result of, or are directly or indirectly connected with, any of the following:

(i) any breach, untruth or inaccuracy of any representation or warranty of Parent or Merger Sub contained in this Agreement, including any certificate delivered pursuant to Sections 2.14 or 6.3 of this Agreement, as of the date hereof or as of the Closing Date as though such representations or warranties were made on the Closing Date; and

(ii) the breach or nonperformance by Parent or Merger Sub of any of its respective covenants or agreements contained in this Agreement.

(c) Subject to the terms of this Article IX, the right of the Indemnified Persons to seek indemnification under Section 9.2(a)(i) and Section 9.2(b)(i) (except with respect to the IP Reps and the Fundamental Reps) shall be limited to and capped at an amount equal to the Liability Cap, which amount may be recoverable, in the case of Parent, at the sole discretion of Parent, from the Escrow Fund and/or by the Indemnification Offset Payment, and in the case of the Seller Party Indemnitees, by wire transfer of immediately available funds from Parent to the Payments Administrator for further distribution to the Company Securityholders.

(d) Subject to the terms of this Article IX, the right of the Parent Indemnitees to seek indemnification under (i) Section 9.2(a)(i) with respect to the IP Reps shall be limited to and capped at an amount equal to fifty percent (50%) of the Available Merger Consideration actually paid, payable or which may become payable at a later date; (ii) Section 9.2(a)(xi) with respect to the continuation of the Company Option Plan and the Company Options after the Effective Time shall be limited to and capped at an amount equal to the aggregate of: (A) the value paid by Parent or any of its Affiliates to repurchase any shares of common stock of Surviving Corporation whether by a privately negotiated purchase, a short-form merger under Delaware law or otherwise minus the exercise price paid for such shares of common stock of Surviving Corporation; *provided, however*, such value per share shall not exceed the fair market value per share of common stock of Surviving Corporation at such time as determined in good faith by Parent's Board of Directors based upon an independent Third Party valuation conducted by a Third Party selected by Parent's Board of Directors and reasonably acceptable to Stockholders' Agent, such acceptance not to be unreasonably withheld, conditioned, or delayed, unless such repurchase is in accordance with an appraisal proceeding under Delaware law in which case the value shall be determined in accordance with such

appraisal proceedings, plus (B) costs incurred by Parent or any of its Affiliates in connection with the acquisition of such shares of common stock of Surviving Corporation, and (iii) Section 9.2(a)(i) with respect to the Fundamental Reps and Sections 9.2(a)(iii) through 9.2(a)(x) shall be limited to and capped at an amount equal to one hundred percent (100%) of the Available Merger Consideration actually paid, payable or which may become payable at a later date, in each case, which amounts may be recoverable at the sole discretion of Parent, solely from the Escrow Fund and/or by the Indemnification Offset Payment.

(e) The Indemnified Persons shall not be entitled to indemnification pursuant to Section 9.2(a)(i) or Section 9.2(b)(i) (excluding the IP Reps and Fundamental Reps, as to which the limitation in this Section 9.2(e) shall not apply) for any Losses until the aggregate amount of all Losses incurred by the Indemnified Persons with respect thereto exceeds $300,000 (the "Deductible"), in which case the Indemnified Persons shall be entitled to indemnification for all Losses, in excess of the Deductible, incurred by such Indemnified Persons.

(f) For the sole purpose of determining Losses (and not for determining whether any breach of any representation or warranty has occurred), the representations and warranties of the Parties shall not be deemed qualified by any references to material, materiality or material adverse effect qualification contained therein.

(g) No indemnity shall be provided for, and Losses shall not include (i) any Taxes of the Company or for which the Company may be otherwise liable attributable to any Tax period (or portion thereof) that begins after the Closing Date, or (ii) any limitation or diminution of or on any Tax attribute of the Company.

(h) Upon any Indemnified Person becoming aware of any claim as to which indemnification may be sought by such Indemnified Person pursuant to this Article IX, such Indemnified Person and its Affiliates shall utilize commercially reasonable efforts to pursue any available insurance policies and utilize commercially reasonable efforts, consistent with normal practices and policies and good commercial practice, to mitigate the Losses which would reasonably be expected to result from such claim. With respect to each particular claim for indemnification under this Agreement, the Indemnifying Person shall not be liable for any Losses to the extent the particular Losses result directly from actions taken by or on behalf of the Indemnified Person after the Closing.

(i) Any Indemnified Person's right to indemnification pursuant to Article IX on account of any Losses will be reduced by all insurance or other third party indemnification proceeds actually collected by the Indemnified Party after making a timely claim pursuant to Section 9.2(h) that relate directly to any such Losses.

(j) The aggregate amount of all Losses for which a Company Securityholder shall be liable pursuant to Section 9.2(a) shall not exceed such Company Securityholder's pro rata portion of the Available Merger Consideration.

9.3 Escrow Fund.

(a) Promptly after the Effective Time, Parent shall deposit the Escrow Amount with the Escrow Agent, such deposit (together with interest and other income thereon) to constitute the Escrow Fund and to be governed by the terms set forth herein and in the Escrow Agreement.

(b) On the Survival Termination Date, the Escrow Agent shall deliver any remaining amounts in the Escrow Fund to the Payments Administrator, for the benefit of the Company Securityholders in accordance with the Payout Schedule, less amounts that would be necessary to satisfy fully any then pending and unsatisfied or unresolved claims for indemnification timely asserted by any Parent Indemnitee in accordance with this Article IX and the Escrow Agreement as if such claims were resolved in favor of Parent or such other Parent Indemnitee, and less any applicable withholding Tax. Amounts not distributed under the foregoing in respect of pending and unsatisfied or unresolved claims shall remain in the Escrow Fund until the related claims have been resolved or until any such portion of such amounts is determined pursuant to Section 9.5 to be no longer necessary to satisfy such claims. As soon as all such claims have been resolved or any such portion of such amounts is determined pursuant to Section 9.5 to be no longer necessary to satisfy such claims, the Escrow Agent shall deliver to the Payments Administrator, for the benefit of the Company Securityholders in accordance with the Payout Schedule, the remaining portion of such undistributed amount, if any, not required to satisfy such claims (less any applicable withholding Tax). All payments made by the Payments Administrator to the Company Securityholders under this Article IX shall be made in accordance with their respective letters of transmittal, or other appropriate documentation.

9.4 Stockholders' Agent.

(a) By virtue of the approval and adoption of this Agreement by the requisite consent of the Company Stockholders and the subsequent consent, by the Company Stockholders, to the Transmittal Letter, each of the Company Stockholders (other than any Dissenting Stockholders) shall be deemed to have agreed to appoint Shareholder Representative Services LLC as its agent and attorney-in-fact (the "Stockholders' Agent") for and on behalf of the Company Securityholders to give and receive notices and communications, to object to payments to any Parent Indemnitee pursuant to Section 9.2 in satisfaction of claims by any Parent Indemnitee, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, to assert, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to, any other claim by any Parent Indemnitee against any Company Securityholder or by any such Company Securityholder against any Parent Indemnitee or any dispute between any Parent Indemnitee and any such Company Securityholder, to authorize payment to any Parent Indemnitee of any of the Escrow Amount, or any portion thereof, in satisfaction of any indemnification claims by any Parent Indemnitee, and to review, negotiate, agree to and authorize any Indemnification Offset Payments and payments from the Escrow Fund in satisfaction of any payment obligation, in each case, on behalf of the Company Securityholders, as contemplated hereunder in each case relating to this Agreement, the Escrow Agreement or the transactions contemplated hereby or thereby, and to take all other actions that are either (i) necessary or appropriate in the judgment of the Stockholders' Agent for the accomplishment of the foregoing or (ii) specifically mandated by Applicable Law or the terms of this Agreement. If the Stockholders' Agent shall resign or be removed by the Company Securityholders, the Advisory Group shall (by consent of a majority of the members of the Advisory Group), within 10 days after such resignation or removal, appoint a successor to the Stockholders' Agent. Any such successor shall succeed the former Stockholders' Agent as the Stockholders' Agent hereunder.

(b) Parent and its Affiliates shall be entitled to rely on any action or decision of the Stockholders' Agent. Parent and its Affiliates shall not be obliged to inquire into the authority of the Stockholders' Agent, and Parent and its Affiliates shall be fully protected in dealing with the Stockholders' Agent in good faith.

(c) The Stockholders' Agent shall treat confidentially any nonpublic information disclosed to it pursuant to this Agreement and shall not use such nonpublic information other than in the performance of its duties as the Stockholders' Agent. In addition, the Stockholders' Agent shall not disclose any nonpublic information disclosed to it pursuant to this Agreement to anyone except as required by Applicable Law; provided that (i) the Stockholders' Agent may disclose such nonpublic information to legal counsel and other advisors under an obligation of confidentiality and non-use in its capacity as such (for the purpose of advising the Company Securityholders on any information disclosed to the Stockholders' Agent pursuant to this Agreement), (ii) the Stockholders' Agent (or legal counsel or other advisor to whom information is disclosed pursuant to clause (i) above) may disclose such nonpublic information in any Claim relating to this Agreement or the transactions contemplated hereby (or, in either case, discussion in preparation therefor) any information disclosed to the Stockholders' Agent pursuant to this Agreement and (iii) the Stockholders' Agent may disclose to any member of the Advisory Group any information disclosed to the Stockholders' Agent subject to such member of the Advisory Group agreeing with Parent in writing to restrictions on the disclosure and use of such information consistent with the restrictions to which the Stockholders' Agent is subject.

(d) The Stockholders' Agent represents and warrants to Parent and Merger Sub, as to itself, that:

(i) The Stockholders' Agent has all necessary limited liability company power and authority to execute and deliver this Agreement and the Escrow Agreement and to carry out his, her or its obligations hereunder and thereunder;

(ii) This Agreement has been duly executed and delivered by the Stockholders' Agent and, assuming the due authorization, execution and delivery of this Agreement by the other Parties, constitutes the valid and legally binding obligation of the Stockholders' Agent, enforceable against the Stockholders' Agent in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar Applicable Laws relating to or affecting creditors generally and by general equity principles; and

(iii) The Escrow Agreement will be duly executed and delivered by the Stockholders' Agent and, assuming the due authorization, execution and delivery of the Escrow Agreement by the other parties thereto, will constitute a legal, valid and binding obligation of the Stockholders' Agent, enforceable against the Stockholders' Agent in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar Applicable Laws relating to or affecting creditors generally and by general equity principles.

(e) In accordance with Section 2.7(b), Parent shall wire to the Stockholders' Agent the Expense Fund. The Expense Fund shall be held by the Stockholders' Agent as agent and for the benefit of the Company Securityholders in a segregated client account and shall be used for the purposes of paying directly, or reimbursing the Stockholders' Agent for, any out-of-pocket costs and expenses and legal fees and other legal costs reasonably incurred by the Stockholders' Agent pursuant to this Agreement, the Escrow Agreement or any other agreements ancillary hereto. The Stockholders' Agent shall hold these funds separate from its corporate funds and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as reasonably determined by the Stockholders' Agent that the Expense Fund is no longer required to be withheld, the Stockholders' Agent shall pay to the Payments Administrator for further distribution to each Company Securityholder, by wire transfer of immediately available funds in the case of any cash payment (or by check as reasonably directed by such Person), such Person's pro rata portion of such Expense Fund in accordance with Article II and the formulas set forth in the Payout Schedule. The Company Securityholders will not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to the Stockholders' Agent any ownership right that they may otherwise have had in any such interest or earnings. The Stockholders' Agent will not be liable for any loss of principal of the Expense Fund other than as a result of its gross negligence or willful misconduct. For tax purposes, the Expense Fund will be treated as having been received and voluntarily set aside by the Company Securityholders at the time of Closing.

(f) The Stockholders' Agent will incur no liability of any kind with respect to any action or omission by the Stockholders' Agent in connection with the Stockholders' Agent's services pursuant to this Agreement and any agreements ancillary hereto, except in the event of liability directly resulting from the Stockholders' Agent's gross negligence or willful misconduct. The Stockholders' Agent shall not be liable for any action or omission pursuant to the advice of counsel. The Company Securityholders will indemnify, defend and hold harmless the Stockholders' Agent from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "Representative Losses") arising out of or in connection with the Stockholders' Agent's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; *provided*, that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Stockholders' Agent, the Stockholders' Agent will reimburse the Company Securityholders the amount of such indemnified Representative Loss to the extent attributable to such gross negligence or willful misconduct. If not paid directly to the Stockholders' Agent by the Company Securityholders, any such Representative Losses may be recovered by the Stockholders' Agent from (i) the funds in the Expense Fund, (ii) the amounts in the Escrow Fund at such time as remaining amounts would otherwise be distributable to the Company Securityholders, or (iii) from the Milestone Consideration at such time as any such amounts would otherwise be distributable to the Company Securityholders; *provided*, that while this Section 9.4(f) allows the Stockholders' Agent to be paid from the aforementioned sources of funds, it does not relieve the Company Securityholders from their obligation to promptly pay such Representative Losses as they are suffered or incurred, nor does it

prevent the Stockholders' Agent from seeking any remedies available to it at law or otherwise. In no event will the Stockholders' Agent be required to advance its own funds on behalf of the Company Securityholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of the Company Securityholders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Stockholders' Agent under this Section. The foregoing indemnities will survive the Closing, the resignation or removal of the Stockholders' Agent or the termination of this Agreement.

9.5 Indemnification Claims.

(a) In the event a claim is made by an Indemnified Person, such Indemnified Person must give prompt written notice (the "Claim Notice") of such claim to the Company Securityholders (by means of delivery to the Stockholders' Agent), or the Parent, as applicable (the Party or Parties against whom indemnification is sought, the "Indemnifying Person"). The Claim Notice shall state that an indemnification claim or indemnification claims pursuant to Section 9.2 or any other provision of this Agreement is being made and describing the basis for such claim with reasonable specificity and specifying in reasonable detail the Losses in respect of the claim (provided that the Indemnified Person shall not be bound by any estimate of Losses contained in such description). The Claim Notice shall be provided to the Indemnifying Person as soon as practicable after the Indemnified Person becomes aware that it has incurred or suffered a Loss. Notwithstanding the foregoing but subject to Section 9.1, any failure to provide the Indemnifying Person with a Claim Notice, or any failure to provide a Claim Notice in a timely manner as aforesaid, shall not relieve any Indemnifying Person from any liability that it may have to the Indemnified Person under this Section 9.5 except to the extent, if at all, that the ability of such Indemnifying Person to defend such claim is materially prejudiced by the Indemnified Person's failure to give such Claim Notice. If the Claim Notice relates to a Third Party Claim, the procedures set forth in Section 9.6 will be applicable.

(b) If the Claim Notice does not relate to a Third Party Claim, within thirty (30) Business Days after receipt of such notice, the Indemnifying Person shall provide a written notice to the Indemnified Person indicating whether the Indemnifying Persons object to the indemnification claim and describing the basis for any objection with reasonable specificity. If no such objection notice is received by the Indemnified Person within such thirty (30) Business Day period, the Indemnifying Persons shall be deemed to be entirely liable for indemnification of the indemnification claim pursuant to this Agreement. If such notice of objection is provided within such period, the Indemnifying Persons, the Indemnified Person and their respective representative(s) shall then attempt in good faith for thirty (30) days to agree upon a resolution of such indemnification claim. If no such resolution can be reached after good faith negotiation during such thirty (30) day period, unless otherwise agreed to in writing by the Indemnifying Person and the Indemnified Person, the Indemnified Person may institute proceedings in a court of competent jurisdiction (in accordance with Section 10.7) to resolve any such dispute, and the Indemnified Person and the Indemnifying Person shall seek to resolve such dispute in as expeditious a manner as practicable. In the case of any such proceeding, the Indemnified Person and the Indemnifying Person shall each be responsible for the payment of its own fees and expenses.

9.6 Third Party Claims. The following additional provisions shall apply with respect to any Claims or demands by Third Parties as to which any Indemnified Person seeks indemnification hereunder (a "Third Party Claim"), except that Claims or demands by Taxing authorities for taxes shall be governed by Section 9.7.

(a) Unless such Indemnified Person affirmatively elects not to control the defense of such Third Party Claim (such notice, the "Non-Defense Election") by delivering a written notice to the Indemnifying Person within thirty (30) days after giving the Indemnifying Person the applicable Claim Notice in respect of such Third Party Claim, such Indemnified Person shall defend, contest, negotiate or settle each such Third Party Claim through counsel of its own selection (who shall be reasonably acceptable to the Indemnifying Person), at the expense and for the account of the Indemnifying Person (and the Indemnifying Person shall cooperate with and provide reasonable assistance to any such Indemnified Person in the defense of such Claim or demand); *provided*, *however*, that

(i) the Indemnifying Person shall be entitled to receive copies of such pleadings, notices and communications with respect to any Third Party Claim as the Indemnifying Person may reasonably request and participate in such defense, at its own expense, with counsel of its choosing and such Indemnified Person and its counsel shall cooperate with the Indemnifying Person in doing so, and

(ii) such Indemnified Person will not settle, compromise, or offer to settle or compromise any such Third Party Claim unless (A) the Indemnifying Person provides prior written consent, which consent will not be unreasonably withheld, conditioned or delayed so long as such settlement or compromise releases the Indemnifying Person completely in connection with such Third Party Claim, with no statement as to or an admission of fault by or on behalf of the Indemnifying Person and no monetary or nonmonetary relief granted by or imposed upon the Indemnifying Person or any of its Affiliates or (B) no indemnification under this Article IX is sought by any Indemnified Person in connection with the Third Party Claim covered by the settlement.

(b) If the Indemnified Person delivers a Non-Defense Election to the Indemnifying Person within thirty (30) days after giving the Indemnifying Person the applicable Claim Notice in respect of such Third Party Claim, subject to Section 9.6(d), the Indemnifying Person shall be entitled to defend, contest, negotiate or settle such Third Party Claim, at the expense and for the account of the Indemnifying Person, through counsel of its own selection (who shall be reasonably acceptable to the Indemnified Person), if the Indemnifying Person provides written notice to the Indemnified Persons within thirty (30) days after receiving the applicable Claim Notice in respect of such Third Party Claim that the Indemnifying Person elects to control the defense of such Third Party Claim.

(c) Notwithstanding anything to the contrary in this Section 9.6, in the event and for so long as a Third Party Claim (i) relates solely to the payment of monetary damages in an aggregate amount that does not exceed the amount then available under the Escrow Fund (excluding amounts in the Escrow Fund that are otherwise the subject of pending indemnification claims under this Article IX), which amount must remain in escrow pending final resolution of such Third Party Claim, (ii) does not relate to felony criminal conduct or the payment of Taxes, (iii) was not instituted

by a Governmental Entity, and (iv) does not seek equitable, injunctive or other non-monetary relief, subject to Section 9.6(d), the Indemnifying Person shall be entitled to defend, contest, negotiate or settle such Third Party Claim, at the expense and for the account of the Indemnifying Person, through counsel of its own selection (who shall be reasonably acceptable to the Indemnified Person), if the Indemnifying Person provides written notice of its election to assume such defense pursuant to this Section 9.6(c) within thirty (30) days after the Indemnified Person first delivers the applicable Claim Notice in respect of such Third Party Claim to the Indemnifying Person and the Indemnifying Person acknowledges in such written notice that any Losses that may be asserted against the Indemnified Person in such Third Party Claim constitute Losses for which the Indemnified Person is entitled to indemnification pursuant to this Article IX.

(d) In the event that the Indemnifying Person has assumed the defense of any Third Party Claim pursuant to either Section 9.6(b) or 9.6(c), in each case all of the following shall apply:

(i) The Indemnified Person shall cooperate with and provide reasonable assistance to the Indemnifying Person in the defense of such Third Party Claim;

(ii) the Indemnified Person shall be entitled to receive copies of all pleadings, notices and communications with respect to such Third Party Claim as the Indemnified Person may reasonably request and participate in such defense, at its own expense, with counsel of its choosing and the Indemnifying Person and its counsel shall cooperate with the Indemnified Person in doing so;

(iii) the Indemnified Person shall be entitled to immediately assume control of the defense, contest, negotiation and settlement of such Third Party Claim in the event any of the conditions in clauses (i) through (iv) of Section 9.6(c) are not satisfied with respect to such Third Party Claim, or if the Indemnifying Person fails to diligently defend such Third Party Claim, in which case such costs and expenses associated with such defense by the Indemnified Person may be sought in a claim for indemnification hereunder; and

(iv) the Indemnifying Person shall not be entitled to settle, compromise, or offer to settle or compromise such Third Party Claim without the prior written consent of the Indemnified Person, which consent will not be unreasonably withheld, conditioned or delayed so long as (A) the conditions in clauses (i) through (iv) of Section 9.6(c) are satisfied with respect to such Third Party Claim, (B) such settlement or compromise includes only the payment of monetary damages (which are fully paid at the time of such settlement or compromise by the Indemnifying Person), and (C) such settlement or compromise releases the Indemnified Person completely in connection with such Third Party Claim, with no statement as to or an admission of fault by or on behalf of the Indemnified Person or any of its Affiliates and no monetary or nonmonetary relief granted by or imposed upon the Indemnified Person or any of its Affiliates. The Indemnifying Person shall notify the Indemnified Person in writing prior to effecting any settlement or compromise pursuant to this Section 9.6(d)(iv) and shall make available a copy of the settlement agreement for the Indemnified Person’s review prior to execution thereof.

9.7 Tax Claims. If any claim or demand for Taxes in respect of which indemnity may be sought pursuant to this Agreement is asserted in writing against Parent, any of its Affiliates or, effective upon the Closing, the Company, Parent shall notify the Stockholders' Agent of such claim or demand within ten (10) Business Days of receipt thereof, or such earlier time that would allow the Stockholders' Agent to timely respond to such claim or demand, and shall give the Stockholders' Agent such information with respect thereto as the Stockholders' Agent may reasonably request; *provided*, *however*, that for the sake of clarity, any failure by Parent to provide such notice shall not relieve any Person of any liability under this Agreement unless (and then only to the extent that) the Stockholders' Agent's ability to contest such claim or demand has been prejudiced thereby. The Stockholders' Agent may, at the expense of the Company Securityholders, participate in and, upon reasonable prior notice to Parent, may assume the defense of any such Tax dispute. If the Stockholders' Agent assumes such defense, the Stockholders' Agent shall have the sole discretion as to the conduct of such defense and Parent shall have the right to participate (but not the obligation to participate) in the defense thereof and to employ separate counsel at its own expense. In any event, when either Parent or the Stockholders' Agent conducts such defense, it shall (x) keep the other Party promptly and fully informed of the conduct of any such Tax dispute, (y) provide promptly to the other Party any documents, correspondence, or other materials relating to any such Tax dispute, and (z) consider in good faith any reasonable suggestions of the other Party relating to the conduct (including prosecution, compromise, or settlement) of such Tax dispute. Furthermore, the Party conducting the defense of any such Tax dispute shall not settle such Tax dispute without the prior written consent of such other Party (which consent shall not be unreasonably withheld, delayed or conditioned). For the avoidance of doubt, the provisions of this Section 9.7, and not those of Section 9.5 or 9.6 will control with respect to proceedings relating to claims or demands for Taxes.

9.8 Payment.

(a) Upon a determination of liability under this Article IX, the Indemnifying Persons will pay or cause to be paid to the Indemnified Person the amount so determined within five (5) Business Days after the date of such determination.

(b) If the Losses incurred by the Parent, Merger Sub, or any of their respective Affiliates covered by this Article IX are being addressed via an Indemnification Offset Payment, then upon a determination of liability under this Article IX, Parent shall deliver any amounts set-off pursuant to the right of set-off in Section 9.2(a) and not required to satisfy such claims, to the Payments Administrator, to be paid in the manner set forth in Article VIII as if such payment were part of the Contingent Consideration.

(c) Any indemnification payment to be made to any of the Parent Indemnitees pursuant to Section 9.2(a) from the Escrow Fund, subject to the Escrow Agreement, shall be effected by wire transfer of immediately available funds within five (5) Business Days after the resolution thereof in accordance with this Agreement and the Escrow Agreement to an account designated in writing by the applicable Parent Indemnitee. With respect to any such payment to be made from the Escrow Fund, Parent and the Stockholders' Agent shall promptly execute any necessary documents jointly instructing the Escrow Agent to distribute such payment in accordance herewith.

9.9 Consequences of Indemnification Payments. Any payments made to an Indemnified Person pursuant to any indemnification obligations under this Article IX will be treated as adjustments to the purchase price for Tax purposes and such agreed treatment will govern for purposes of this Agreement, unless otherwise required by Applicable Law. To the extent such payments are to be made to the Company Securityholders, they shall be distributed in accordance with the provisions of Section 2.6 and Section 2.12 applicable to the distribution of Earn-Out Payments.

9.10 Sole and Exclusive Remedy. The indemnification remedies provided in this Article IX shall constitute the exclusive remedy of the Parties hereto after the Closing for any claim in connection with this Agreement or any other transaction documents, including any claim for any Losses resulting from a breach of any party of any representation, warranty, covenant or agreement, and no party, nor any Affiliate thereof or any other Person shall be entitled to make any claim or otherwise recover Losses from any Party except as expressly provided under Article IX. Except as otherwise set forth herein, claims against the Escrow Fund pursuant to this Article IX and/or Indemnification Offset Payments constitute the sole and exclusive remedy of the Indemnified Persons against the Company Securityholders for any Losses hereunder.

ARTICLE X
GENERAL PROVISIONS

10.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (a) upon receipt if delivered personally, (b) one (1) Business Day after being sent by commercial overnight courier service, or (c) upon transmission if sent via facsimile or email with confirmation of receipt to the Parties made by the recipient at the following addresses (or at such other address for a Party as shall be specified upon like notice):

(a) if to Parent, Merger Sub or Surviving Corporation, to:

pSivida Corp.
480 Pleasant Street
Watertown, MA 02472
Attention: John D. Mercer, Corporate Counsel
Facsimile: (617) 926-5050
Email: jmercer@psivida.com

with a copy (which shall not constitute notice) to:
Hogan Lovells US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Attention: Steven J. Abrams
Facsimile: (267) 675-4601
Email: steve.abrams@hoganlovells.com

(b) if to the Company, to:

Icon Bioscience, Inc.
39899 Balentine Dr Suite 200
Newark, CA 94560
Attention: David Tierney
Facsimile: (408)716-4983
Email: davidtierney@iconbioscience.com
with a copy (which shall not constitute notice) to:

Pepper Hamilton LLP
400 Berwyn Park
899 Cassatt Road
Berwyn, PA 19312
Attention: Christopher Miller, Esq.
Facsimile: (610) 640-7835
Email: MILLERC@pepperlaw.com

(c) if to the Stockholders' Agent, to:

Shareholder Representative Services LLC
950 17th Street, Suite 1400
Denver, CO 80202
Attention: Managing Director
Email: deals@srsacquiom.com
Facsimile No.: (303) 623-0294
Telephone No.: (303) 648-4085

10.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart.

10.3 Regulatory Filings. As soon as practicable after the date hereof, Parent shall make (i) any filings required under the Securities Act, the Exchange Act, any applicable state or securities or "blue sky" laws and the securities laws of any foreign country, or any other Applicable Law relating to the Merger; (ii) any filings required by the Australian Corporations Act 2001 or the Australian Securities Exchange (the "ASX") and (iii) any filings required by the FDA or any other Governmental Entity. Parent will cause all documents that it is responsible for filing with any Governmental Entity under this Section 10.3 to comply in all material respects with all Applicable Law.

10.4 Entire Agreement; Nonassignability; Parties in Interest.

(a) This Agreement and the documents and instruments delivered pursuant hereto, including all Exhibits hereto, the Company Disclosure Letter, the Parent Disclosure Letter and all other Schedules hereto:

(i) together constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof, except for the Confidentiality Agreement, which shall continue in full force and effect in accordance with its terms and shall survive any termination of this Agreement; and

(ii) shall not be assigned by Parent or Merger Sub, on the one hand, or by the Company, on the other hand (by operation of law or otherwise), without the written consent of each of the Parties (and any purported assignment in violation of this Agreement shall be void); *provided*, *however*, that Parent and Merger Sub may assign (by operation of law or otherwise) all or any of their respective rights hereunder to an Affiliate so long as such Affiliate assumes this Agreement and agrees to be bound by and to comply with the applicable terms and conditions hereof; *provided*, *further*, that Parent may substitute, by written notice to the Company, another direct or indirect Subsidiary of Parent, or an Affiliate of Parent, in lieu of Merger Sub, in which event all references herein to Merger Sub shall be deemed references to such other Person, except that all representations and warranties made herein with respect to Merger Sub as of the date of this Agreement shall be deemed representations and warranties made with respect to such other Person as of the date of such substitution; *provided*, *further*, that, from and after the Effective Time, Parent and the Surviving Corporation may assign all of their rights and obligations hereunder to any Third Party that directly or indirectly acquires all of the capital stock, all or substantially all of the assets, or all or part of the business, of Parent or the Surviving Corporation, so long as such Third Party assumes this Agreement and agrees to be bound by and to comply with the applicable terms and conditions hereof; *provided*, *further*, that Parent, Merger Sub and Surviving Corporation may assign in whole or in part, all of their rights and obligations hereunder without such consent, as collateral in connection with any financing of Parent, Merger Sub, Surviving Corporation or any of their Affiliates.

(b) If this Agreement is assigned to a Third Party pursuant to Section 10.4(a)(ii), and (i) the Development Milestone Payment is unearned at the time of the assignment, (ii) process validation for the Lead Product has been successfully completed to support commercialization of the Lead Product in the United States in accordance with all Applicable Laws, including cGMP and the general process validation principles and approaches that FDA considers appropriate for the manufacture of human drug products as provided in *FDA's Guidance for Industry, Process Validation: General Principles and Practices*, and (iii) there has been no commercialization of the Lead Product as of March 31, 2019, then the Development Milestone shall be due and payable in full at the closing of the transaction pursuant to which this Agreement is assigned.

(c) This Agreement and the documents and instruments delivered pursuant hereto, including all Exhibits hereto, the Company Disclosure Letter, the Parent Disclosure Letter and all other Schedules hereto are not intended to, and do not, confer upon any Person other than the Parties who are signatories hereto any rights or remedies hereunder except (i) to the Company Securityholders as set forth in Article II and Article VIII; *provided*, that the Stockholders' Agent has

the sole right to pursue a remedy under Article VIII and (ii) as set forth in Section 5.9; *provided*, that the Parties further agree that the rights of Third Party beneficiaries under Section 5.9 shall not arise unless and until the Effective Time occurs. For the avoidance of doubt, Persons other than the Company, Parent and Merger Sub may not rely on any representations and warranties or other statements contained in this Agreement, the Parent Disclosure Letter or the Company Disclosure Letter.

10.5 Severability. In the event that any provision of this Agreement, or the application thereof becomes, or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement, and the application of such provision to other Persons or circumstances other than those as to which it is determined to be illegal, void or unenforceable, will not be impaired or otherwise affected and will continue in full force and effect and be enforceable to the fullest extent permitted by Applicable Law.

10.6 Remedies Cumulative. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with, and not exclusive of, any other remedy conferred hereby, or by Applicable Law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

10.7 Dispute Resolution.

(a) Subject to Section 10.7(b), in the event of a dispute with regard to the formation, interpretation, validity, binding effect, performance, breach or alleged breach, termination, as well as non-contractual claims arising in connection with, arising out of, occurring under, or related to this Agreement, either Parent or the Stockholders' Agent may require that each other forward the matter to a senior executive officer or other Person of each such Party with decision-making authority (or designee with similar authority to resolve such dispute) of each such Party, who shall attempt in good faith to resolve such dispute. If such dispute is not resolved prior to the expiration of such thirty (30) day period, then either Parent or the Stockholders' Agent shall be free to submit the dispute to be finally and conclusively settled by the arbitration proceedings outlined in Section 10.7(b) below; provided, however, that disputes that are subject to the Neutral Auditor's final decision-making authority pursuant to Section 2.15 or the Auditor's final decision-making authority pursuant to Section 8.8 shall not be subject to the dispute resolution procedures in this Section 10.7(a) or Section 10.7(b) and the Neutral Auditor's or Auditor's decision shall be final, non-appealable and binding on the Parties.

(b) Any unresolved disputes between Parent and the Stockholders' Agent with regard to the formation, interpretation, validity, binding effect, performance, breach or alleged breach, termination, as well as non-contractual claims arising in connection with, arising out of, occurring under, or related to this Agreement, shall be resolved by final and binding arbitration conducted pursuant to this Section 10.7(b). Whenever Parent or the Stockholders' Agent shall decide to institute arbitration proceedings, it shall give written notice to that effect to the other Party. Arbitration shall be seated in the City of Boston, Massachusetts and shall be conducted according to the arbitration rules of the International Chamber of Commerce ("ICC") in effect at the time of execution of this Agreement, and the governing substantive law shall be the internal Applicable Laws of the State of Delaware applicable to parties residing in the State of Delaware, without regard

to applicable principals of conflicts of law. The arbitration will be conducted by a tribunal of three arbitrators appointed in accordance with the ICC rules; provided, that each of Parent and the Stockholders' Agent shall within thirty (30) days after the institution of the arbitration proceedings appoint an arbitrator, and such arbitrators shall together, within thirty (30) days, select a third arbitrator as the chairman of the arbitral tribunal, and each arbitrator shall have significant experience in the life sciences industry. If the two initial arbitrators are unable to select a third arbitrator within such thirty (30) day period, the third arbitrator shall be appointed in accordance with ICC rules. The language of the arbitration proceedings shall be English. Each of Parent and the Stockholders' Agent shall prepare a written report setting forth its position with respect to the substance of the dispute and the tribunal shall select one of the Party's positions as its decision, based on the criteria, if any, set forth in relevant provision(s) of this Agreement giving rise to the dispute, and shall not have authority to render any substantive decision other than to so select the position of either Parent or Stockholders' Agent as set forth in their respective written reports. The tribunal may establish reasonable additional procedures to facilitate such arbitration, including preliminary meetings between Parent and the Stockholders' Agent to discuss potential terms; *provided*, *however*, that neither Party to the arbitration proceeding shall be entitled to any discovery or depositions. The tribunal shall render their final award within sixty (60) days from the date of commencement of the arbitration. The Party that has instituted the arbitration proceedings shall, during the course of such arbitration, pay the costs of such arbitration. A final award issued by the tribunal may allocate the costs of the arbitration proceedings, including administration fees, fees of the arbitrators, and Parent's and the Stockholders' Agent's attorneys' fees and expenses among the Parties as the tribunal deems appropriate. Decisions of the tribunal shall be final and binding on the Parties. Judgment on the award so rendered may be entered in any court of competent jurisdiction. Each Party shall continue to perform its obligations under this Agreement pending final resolution of any dispute resolution procedure.

(c) The Parties undertake to maintain confidentiality as to the existence of the arbitration proceedings set forth in Section 10.7(b) and as to all submissions, correspondence and evidence relating to the arbitration proceedings. This provision shall survive the termination of the arbitral proceedings.

(d) Nothing in this Section 10.7 shall preclude a Party from seeking and obtaining in a court of competent jurisdiction injunctive or equitable relief, at any time during the pendency of arbitration proceedings, to preserve the status quo or prevent immediate harm to the Party.

10.8 Rules of Construction.

(a) The Parties agree that they have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any Applicable Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

(b) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(c) As used in this Agreement, (i) the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation,” (ii) the words “hereby,” “herein,” “hereunder” and “hereto” shall be deemed to refer to this Agreement in its entirety and not to any specific section of this Agreement, and (iii) the word “will” shall be construed to have the same meaning and effect as the word “shall.”

(d) Except as otherwise indicated, all references in this Agreement to “Sections” and “Exhibits” are intended to refer to Sections of this Agreement, the Company Disclosure Letter or the Parent Disclosure Letter, as appropriate, and Exhibits to this Agreement.

(e) The headings and subheadings used in this Agreement are for convenience of reference only and shall have no force or effect whatsoever in interpreting any of the provisions of this Agreement.

(f) Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (ii) any reference to any Applicable Laws herein shall be construed as referring to such Applicable Laws as from time to time enacted, repealed or amended, and (iii) any reference herein to any Person shall be construed to include the Person’s successors and assigns (subject to any restrictions on assignment set forth herein).

(g) For purposes of this Agreement and the Company Disclosure Letter, the phrases “has made available to Parent,” “previously made available to Parent” or “previously provided” and similar expressions in respect of any document or information will be construed for all purposes of this Agreement and the Company Disclosure Letter (including the schedules hereto) as meaning that a copy of such document or information was filed in the electronic data room to which Parent has access, at least three (3) Business Days prior to the date hereof.

10.9 Time is of the Essence; Enforcement. Time is of the essence of this Agreement. Each of the Parties agrees that irreparable damage would occur and that the Parties would not have any adequate remedy at Applicable Law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at Applicable Law or in equity.

10.10 Amendment; Waiver. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties. Any waiver of any of the terms or conditions of this Agreement must be in writing and must be duly executed by or on behalf of the Party to be charged with such waiver. Except as expressly set forth in this Agreement, the failure of a Party to exercise any of its rights hereunder or to insist upon strict adherence to any term or condition hereof on any one occasion shall not be construed as a waiver or deprive that Party of the right thereafter to insist upon strict adherence to the terms and conditions of this Agreement at a later date. Further, no waiver of any of the terms and conditions of this Agreement shall be deemed to or shall constitute a waiver of any other term of condition hereof (whether or not similar).

10.11 Fees and Expenses. Except as otherwise set forth in this Agreement, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of financial advisors, financial sponsors, legal counsel and other advisors, shall be paid by the Party incurring such expenses whether or not the Merger is consummated.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company, Parent, Merger Sub and the Stockholders' Agent have caused this Agreement to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

PSIVIDA CORP.

By: /s/ Nancy Lurker
Name: Nancy Lurker
Title: President and Chief Executive Officer

OCULUS MERGER SUB, INC.

By: /s/ Leonard S. Ross
Name: Leonard S. Ross
Title: President

ICON BIOSCIENCE, INC.

By: /s/ David S. Tierney
Name: David S. Tierney
Title: Chief Executive Officer

SHAREHOLDER REPRESENTATIVE SERVICES LLC, SOLELY IN ITS CAPACITY AS THE STOCKHOLDERS' AGENT

By: /s/ Sam Riffe
Name: Sam Riffe
Title: Executive Director

[*Signature Page to the Agreement and Plan of Merger*]

Exhibit A

Gerlett Consulting Agreement

[*See attached*]

CONFIDENTIAL

CONSULTING AGREEMENT

between

PSIVIDA US, INC.

and

Cathy Gerlett

THIS Consulting Agreement (the "Agreement"), effective as of March 29, 2018 (the "Effective Date"), is entered into between Cathy Gerlett ("Consultant") and pSivida US, Inc. ("pSivida"), a corporation organized under the laws of the State of Delaware.

pSivida desires to retain the services of Consultant in a consulting capacity with respect to certain activities as described in this Agreement, and Consultant is willing to so act.

NOW THEREFORE, Consultant and pSivida agree as follows:

1. Description of Services. pSivida hereby retains Consultant as a consultant to pSivida and Consultant hereby agrees to perform for pSivida the consulting services described in Exhibit A hereto (the "Services").

2. Nature of Relationship. Consultant is an independent contractor and shall not be deemed an employee of pSivida for the purposes of any employee benefit programs, income tax withholding, FICA taxes, unemployment benefits or otherwise. Consultant shall not enter into any agreement or incur any obligations on pSivida's behalf, or commit pSivida in any manner without pSivida's prior written consent.

3. Term and Expiration. This Agreement shall become effective as of the Effective Date and remain in effect through six (6) months, unless earlier terminated as provided herein.

4. Compensation. pSivida will pay Consultant for the Services in accordance with the terms set forth in Exhibit B hereto.

5. Expenses. pSivida will reimburse Consultant for expenses in accordance with the terms set forth in Exhibit B hereto.

6. Intellectual Property, Proprietary Information, and Confidentiality.

(a) Consultant shall promptly and fully disclose to pSivida all inventions, improvements, discoveries, developments, original works of authorship, trade secrets, formulas, processes, techniques, know-how, data, or other intellectual property learned, made, conceived, developed, or reduced to

practice by Consultant, either alone or jointly with others, during the performance of the Services, or which result from tasks assigned to Consultant by pSivida, or which are funded by pSivida, or which result from the use of equipment, facilities, or premises owned, leased, or contracted by pSivida, or which relate to controlled release drug delivery systems or any other product or technology now or formerly under development by pSivida ("Intellectual Property"). Consultant agrees to assign, and does hereby assign, to pSivida and its successors and assigns, without further consideration, the entire right, title, and interest in and to all Intellectual Property, whether or not patentable or copyrightable. Consultant further agrees to execute all applications for patents and/or copyrights, domestic or foreign, assignments and other papers necessary to secure and enforce rights related to the Intellectual Property. The parties acknowledge that all original works of authorship that are made by Consultant within the scope of her consulting Services and that are protectable by copyright are "works made for hire" as the term is defined in the United States Copyright Act (17 USCA § 101).

(b) Consultant understands and agrees that she possesses or may in the future possess information that has been created, discovered, or developed by or on behalf of pSivida, or has otherwise become known to pSivida, which information is not publicly known, and that such information may be disclosed to or discovered by Consultant in the course of performing the Services. All the aforementioned information, as well as all the Intellectual Property, is hereunder called "Proprietary Information." By way of illustration, but not limitation, Proprietary Information includes trade secrets, processes, formulae, data, know-how, improvements, inventions, techniques, planned products, research and development, marketing plans, business plans, clinical trials design, clinical trial results, preclinical results, regulatory filings, regulatory approval strategies, forecasts, customer lists, business plans, and confidential information about technologies, finances, marketing, pricing, costs, and employees.

(c) At all times during her retention as a consultant by pSivida and at all times after termination of this Agreement, Consultant will keep in confidence and trust all Proprietary Information and will not, without the advance written consent of pSivida, disclose any Proprietary Information to any other person or entity or use any Proprietary Information for purposes other than performing the Services.

(d) Consultant shall use her best efforts to keep separate and segregated from other work all documents, records, notebooks, and correspondence arising from performance of the Services. All rights, title, and interest therein shall belong to pSivida and, upon expiration or termination of this Agreement, all such documents and materials, including copies thereof, whether prepared by Consultant or others, will be delivered to pSivida upon written request.

(e) In the event that pSivida is unable for any reason whatsoever to secure Consultant's signature for any lawful and necessary documents required under Section 6, including those necessary for the assignment of, application for, or prosecution of any United States or foreign application for inventors certificates, letter patents, copyrights, or the like, Consultant hereby designates and appoints pSivida and its duly authorized officers and agents as agents and attorneys-in-fact to act for and on her behalf and stead to execute and file any such application and to do all other lawfully permitted acts to further the assignment, prosecution, and issuance of inventors certificates, letter patents, copyrights, and the like with the same legal force as if executed by her. Consultant hereby waives any and all claims of any nature whatsoever that Consultant may now have or may hereafter have for infringement of any patent or copyright resulting from any such application.

7. Reasonableness of Covenant. Consultant represents and acknowledges that (i) she is familiar with the covenant in Section 6, (ii) she is fully aware of her obligations thereunder, and (iii) the provisions of said covenant, including, without limitation, the length of time, scope, and coverage of the limitations, are reasonable.

8. Remedies. Consultant acknowledges that breach of her obligations relating to disclosure and non-use of Confidential Information could cause irreparable harm to pSivida. As a result, Consultant agrees that, in addition to damages and attorneys' fees, pSivida shall be entitled to seek preliminary and permanent injunctive relief for any such breach without having to post a bond.

9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of law principles.

10 No Conflict. Consultant represents that her performance of all of the terms of the Agreement, and that her retention as an advisor to pSivida, does not and will not breach any agreement to keep in confidence proprietary information acquired by Consultant in confidence or in trust prior to her retention as an advisor by pSivida. Consultant has not entered into, and agrees that she will not enter into, any agreement, either written or oral, in conflict herewith. Consultant has not brought, and will not bring with her to pSivida or use in the performance of her responsibilities at pSivida, any equipment, supplies, facility, or trade secret information of any third party, unless she has obtained written authorization for the possession and use thereof. Consultant also agrees that, in her retention as an advisor to pSivida, she will not breach any obligation of confidentiality that she has to others and she agrees that she shall fulfill all such obligations during her retention as an advisor to pSivida. Consultant shall use best efforts to segregate work done under this Agreement from work done for any other entity so as to minimize any questions of disclosure or ownership of rights with regard to intellectual property.

11. Termination.

(a) This Agreement may be terminated upon five (5) days written notice by either party without regard to cause.

(b) Termination of this Agreement by either party shall not affect the rights and obligations of the parties that accrued prior to the effective date of termination. The rights and duties under Paragraphs 6, 7, 8, 10, 12, and 15 of this Agreement shall survive the expiration or termination of this Agreement.

12. Successors, Transferees and Assigns. This Agreement shall be binding upon and shall inure to the benefit of pSivida's successors, transferees, and assigns.

13. Notice. Any notice, report, or other communications required or permitted to be given hereunder shall be in writing to both parties and shall be deemed given on the date of hand delivery or fax, or one day after shipping if shipped by reputable overnight courier, or three days after mailing if mailed by first-class mail, postage prepaid, to the following addresses, or to such other address as any party hereto may designate by notice given as herein provided:

If to Consultant: Cathy Gerlett

Telephone:
Facsimile: NA
Email:

If to pSivida: pSivida US, Inc.
480 Pleasant Street, Suite
B300 Watertown, MA 02472

Attention: John D. Mercer
Director of Intellectual Property and
Corporate Counsel

Telephone: (617) 972-6326
Facsimile: (617) 926-5050
Email: jmercer@psivida.com

14. Amendments. This Agreement shall not be amended or modified in whole or part except by an instrument in writing signed by each party hereto.

15. Attorneys' Fees. In the event that legal action or proceedings are necessary to enforce or interpret the provisions hereof, the prevailing party shall be entitled to reasonable attorneys' fees.

16. Entire Agreement. This Agreement and its Exhibits, including any amendments thereto, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all previous negotiations, commitments, and writings. In addition, should there be any conflict between any Exhibit and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.

17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

In WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date last signed below.

CONSULTANT	PSIVIDA US, INC.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date:	Date:

EXHIBIT A

DESCRIPTION OF SERVICES

- Provide technical and logistic leadership to the Dexycu product.
- Act as main support to the Commercial Manufacturing Operations for the Dexycu product.
- Work with pSivida operations to ensure Quality Systems for product line are being followed and up to date.
- Assist pSivida operations in Quality Management for various projects as needed.
- Assist pSivida operations in technical expertise as needed.
- Other tasks as assigned.FORM pSivida Consulting Agreement

EXHIBIT B

COMPENSATION SCHEDULE AND PAYMENT TERMS

Compensation:

pSivida will pay Consultant __4,659.20__ per week to compensate Consultant for the performance of the Services. Consultant will work 40 hours per week.

Expenses:

pSivida will reimburse Consultant for expenses reasonably, necessarily, and directly incurred in the performance of the Services; provided, however, that pSivida's prior written consent shall be required for any individual expense in excess of One Hundred Dollars ($100).

Payment:

Consultant shall bill pSivida expenses on at least a monthly basis and shall include with her invoice a statement and itemization of expenses incurred during the billing period in a form acceptable to pSivida. Payment for expenses as defined herein will be made by pSivida within thirty (30) days after pSivida's receipt of Consultant's invoice. FORM pSivida Consulting Agreement Page 7 of 7

Exhibit B

Tierney Consulting Agreement

[*See attached*]

CONSULTING AGREEMENT

between

PSIVIDA US, INC.

and

DAVID TIERNEY

THIS Consulting Agreement (the "Agreement"), effective as of the date on which the proposed transaction between pSivida Corp. and Icon Biosciences closes (the "Effective Date"), is entered into between Mr. David Tierney ("Consultant") and pSivida US, Inc. ("pSivida"), a corporation organized under the laws of the State of Delaware.

pSivida desires to retain the services of Consultant in a consulting capacity with respect to certain activities as described in this Agreement, and Consultant is willing to so act.

NOW THEREFORE, Consultant and pSivida agree as follows:

1. Description of Services. pSivida hereby retains Consultant as a consultant to pSivida and Consultant hereby agrees to perform for pSivida the consulting services described in Exhibit A hereto (the "Services").

2. Nature of Relationship. Consultant is an independent contractor and shall not be deemed an employee of pSivida for the purposes of any employee benefit programs, income tax withholding, FICA taxes, unemployment benefits or otherwise. Consultant shall not enter into any agreement or incur any obligations on pSivida's behalf, or commit pSivida in any manner without pSivida's prior written consent.

3. Term and Expiration. This Agreement shall become effective as of the Effective Date until the three month anniversary of the Effective Date, unless earlier terminated as provided herein.

4. Compensation. pSivida will pay Consultant for the Services in accordance with the terms set forth in Exhibit B hereto.

5. Expenses. pSivida will reimburse Consultant for expenses in accordance with the terms set forth in Exhibit B hereto.

6. Intellectual Property, Proprietary Information, and Confidentiality.

(a) Consultant shall promptly and fully disclose to pSivida all inventions, improvements, discoveries, developments, original works of authorship, trade secrets, formulas, processes, techniques, know-how, data, or other

intellectual property learned, made, conceived, developed, or reduced to practice by Consultant, either alone or jointly with others, during the performance of the Services, or which result from tasks assigned to Consultant by pSivida, or which are funded by pSivida, or which result from the use of equipment, facilities, or premises owned, leased, or contracted by pSivida, or which relate to controlled release drug delivery systems or any other product or technology now or formerly under development by pSivida ("Intellectual Property"). Consultant agrees to assign, and does hereby assign, to pSivida and its successors and assigns, without further consideration, the entire right, title, and interest in and to all Intellectual Property, whether or not patentable or copyrightable. Consultant further agrees to execute all applications for patents and/or copyrights, domestic or foreign, assignments and other papers necessary to secure and enforce rights related to the Intellectual Property. The parties acknowledge that all original works of authorship that are made by Consultant within the scope of him consulting Services and that are protectable by copyright are "works made for hire" as the term is defined in the United States Copyright Act (17 USCA § 101).

(b) Consultant understands and agrees that he possesses or may in the future possess information that has been created, discovered, or developed by or on behalf of pSivida, or has otherwise become known to pSivida, which information is not publicly known, and that such information may be disclosed to or discovered by Consultant in the course of performing the Services. All the aforementioned information, as well as all the Intellectual Property, is hereunder called "Proprietary Information." By way of illustration, but not limitation, Proprietary Information includes trade secrets, processes, formulae, data, know-how, improvements, inventions, techniques, planned products, research and development, marketing plans, business plans, clinical trials design, clinical trial results, preclinical results, regulatory filings, regulatory approval strategies, forecasts, customer lists, business plans, and confidential information about technologies, finances, marketing, pricing, costs, and employees.

(c) At all times during him retention as a consultant by pSivida and at all times after termination of this Agreement, Consultant will keep in confidence and trust all Proprietary Information and will not, without the advance written consent of pSivida, disclose any Proprietary Information to any other person or entity or use any Proprietary Information for purposes other than performing the Services.

(d) Consultant shall use him best efforts to keep separate and segregated from other work all documents, records, notebooks, and correspondence arising from performance of the Services. All rights, title, and interest therein shall belong to pSivida and, upon expiration or termination of this Agreement, all such documents and materials, including copies thereof, whether prepared by Consultant or others, will be delivered to pSivida upon written request.

(e) In the event that pSivida is unable for any reason whatsoever to secure Consultant's signature for any lawful and necessary documents required under Section 6, including those necessary for the assignment of, application for, or prosecution of any United States or foreign application for inventors certificates, letter patents, copyrights, or the like, Consultant hereby designates and appoints pSivida and its duly authorized officers and agents as agents and attorneys-in-fact to act for and on him behalf and stead to execute and file any such application and to do all other lawfully permitted acts to further the assignment, prosecution, and issuance of inventors certificates, letter patents, copyrights, and the like with the same legal force as if executed by her. Consultant hereby waives any and all claims of any nature whatsoever that Consultant may now have or may hereafter have for infringement of any patent or copyright resulting from any such application.

7. Reasonableness of Covenant. Consultant represents and acknowledges that (i) he is familiar with the covenant in Section 6, (ii) he is fully aware of him obligations thereunder, and (iii) the provisions of said covenant, including, without limitation, the length of time, scope, and coverage of the limitations, are reasonable.

8. Remedies. Consultant acknowledges that breach of him obligations relating to disclosure and non-use of Confidential Information could cause irreparable harm to pSivida. As a result, Consultant agrees that, in addition to damages and attorneys' fees, pSivida shall be entitled to seek preliminary and permanent injunctive relief for any such breach without having to post a bond.

9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of law principles.

10 No Conflict. Consultant represents that him performance of all of the terms of the Agreement, and that him retention as an advisor to pSivida, does not and will not breach any agreement to keep in confidence proprietary information acquired by Consultant in confidence or in trust prior to him retention as an advisor by pSivida. Consultant has not entered into, and agrees that he will not enter into, any agreement, either written or oral, in conflict herewith. Consultant has not brought, and will not bring with him to pSivida or use in the performance of him responsibilities at pSivida, any equipment, supplies, facility, or trade secret information of any third party, unless he has obtained written authorization for the possession and use thereof. Consultant also agrees that, in him retention as an advisor to pSivida, he will not breach any obligation of confidentiality that he has to others and he agrees that he shall fulfill all such obligations during him retention as an advisor to pSivida. Consultant shall use best efforts to segregate work done under this Agreement from work done for any other entity so as to minimize any questions of disclosure or ownership of rights with regard to intellectual property.

11. Termination.

(a) This Agreement may be terminated upon five (5) days written notice by either party without regard to cause.

(b) Termination of this Agreement by either party shall not affect the rights and obligations of the parties that accrued prior to the effective date of termination. The rights and duties under Paragraphs 6, 7, 8, 10, 12, and 15 of this Agreement shall survive the expiration or termination of this Agreement.

12. Successors, Transferees and Assigns. This Agreement shall be binding upon and shall inure to the benefit of pSivida's successors, transferees, and assigns.

13. Notice. Any notice, report, or other communications required or permitted to be given hereunder shall be in writing to both parties and shall be deemed given on the date of hand delivery or fax, or one day after shipping if shipped by reputable overnight courier, or three days after mailing if mailed by first-class mail, postage prepaid, to the following addresses, or to such other address as any party hereto may designate by notice given as herein provided:

If to Consultant: David S Tierney

Telephone:
Facsimile:
Email:

If to pSivida: pSivida US, Inc.
480 Pleasant Street, Suite
B300 Watertown, MA 02472

Attention: John D. Mercer
Director of Intellectual Property and
Corporate Counsel

Telephone: (617) 972-6326
Facsimile: (617) 926-5050
Email: jmercer@psivida.com

14. Amendments. This Agreement shall not be amended or modified in whole or part except by an instrument in writing signed by each party hereto.

15. Attorneys' Fees. In the event that legal action or proceedings are necessary to enforce or interpret the provisions hereof, the prevailing party shall be entitled to reasonable attorneys' fees.

16. Entire Agreement. This Agreement and its Exhibits, including any amendments thereto, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all previous negotiations, commitments, and writings. In addition, should there be any conflict between any Exhibit and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.

17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

In WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date last signed below.

CONSULTANT	PSIVIDA CORP.
By: _____	By: _____
Name: David Tierney	Name:
	Title:
Date:	Date:

EXHIBIT A

DESCRIPTION OF SERVICES

- Provide regulatory and commercial support to pSivida for the Dexycu product.
- Work with pSivida management to ensure a smooth transition of the Dexycu product (and all associated properties) to pSivida.
- Assist pSivida in other tasks as assigned.

EXHIBIT B

COMPENSATION SCHEDULE AND PAYMENT TERMS

Compensation:

pSivida will pay Consultant Twenty Thousand Dollars ($20,000) per month, based on Consultant providing Services to pSivida at an expected average of 15 hours per week, to compensate Consultant for the performance of the Services. If actual hours exceed such expected average hours per week, pSivida and Consultant shall negotiate additional comensation.

Expenses:

pSivida will reimburse Consultant for expenses reasonably, necessarily, and directly incurred in the performance of the Services; provided, however, that pSivida's prior written consent shall be required for any individual expense in excess of One Hundred Dollars ($100).

Payment:

Consultant shall bill pSivida for compensation and expenses on at least a monthly basis and shall include with him invoice a statement and itemization of expenses incurred during the billing period in a form acceptable to pSivida. Payment for compensation and expenses as defined herein will be made by pSivida within thirty (30) days after pSivida's receipt of Consultant's invoice.

Exhibit C

Form of Stockholders' Written Consent

[*See attached*]

CONFIDENTIAL

ICON BIOSCIENCE, INC.

CONSENT IN LIEU OF A SPECIAL MEETING OF THE STOCKHOLDERS

, 2018

The undersigned holders of capital stock issued by Icon Bioscience, Inc., a Delaware corporation (the "Company"), constituting:

- a majority of the issued and outstanding (i) shares of common stock, par value $0.00001 per share ("Company Common Stock"), (ii) shares of the Company's Series A Preferred Stock, par value $0.00001 per share ("Series A Preferred Stock"), on an as-converted to Company Common Stock basis, and (iii) shares of the Company's Series B Preferred Stock, par value $0.00001 per share ("Series B Preferred Stock"), on an as-converted to Company Common Stock basis, voting together as a single class; and
- holders of issued and outstanding shares of Series A Preferred Stock and Series B Preferred Stock representing the Requisite Majority (as defined in the Third Amended and Restated Certificate of Incorporation of the Company, dated August 19, 2013, the "Charter"),

and acting in accordance with Section 228 of the Delaware General Corporation Law ("DGCL") and Article IV, Section 5(b) of the Charter, do hereby approve and adopt the following resolutions with the same force and effect as though adopted at a duly called and held meeting of the Company's stockholders on such date.

AGREEMENT AND PLAN OF MERGER

WHEREAS, on March 15, 2018, the board of directors of the Company (the "Board") approved and declared advisable (i) the Agreement and Plan of Merger, to be entered into (the "Merger Agreement"), by and among pSivida Corp., a Delaware corporation ("Parent"), Oculus Merger Sub, a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), the Company and Shareholder Representative Services, LLC, a Colorado limited liability company, solely in its capacity as the representative of the Company Securityholders (the "Stockholders' Agent") and (ii) the merger of Merger Sub with and into the Company, pursuant to the terms of the Merger Agreement (the "Merger"); and

WHEREAS, the Board recommended that the stockholders of the Company approve the Merger Agreement and the Merger.

NOW, THEREFORE, BE IT RESOLVED, that the Merger Agreement in the form attached hereto as Exhibit A and including any exhibits and schedules attached thereto be and hereby is adopted;

FURTHER RESOLVED, that the Company's performance of its obligations under the terms and provisions of the Merger Agreement and the transactions contemplated thereby, including, without limitation, the Merger, be and hereby are, in all respects, approved;

FURTHER RESOLVED, that, by virtue of the adoption of the Merger Agreement, each of the undersigned holders of capital stock hereby, on his, her or its own behalf irrevocably nominates, constitutes and appoints Shareholder Representative Services, LLC as the Stockholders' Agent with all powers and authorities under the Merger Agreement and each of the undersigned consents to and approves all other matters set forth in the Merger Agreement; and that, Joyce Erony, David Tierney and Song Tjoa, each a director of the Company (the "Advisory Group"), be appointed as the Advisory Group to provide post-closing instruction to the Stockholders' Agent regarding any post-closing claims, disputes or other events communicated to the Stockholders' Agent related to the Merger;

FURTHER RESOLVED, that, contingent upon and effective immediately prior to the consummation of the Merger, to the extent such undersigned holder of capital stock is a party to: (i) the Second Amended and Restated Investor Rights Agreement, dated August 20, 2013, between the Company and the stockholder parties thereto (the "IRA") or (ii) the Voting Agreement, dated August 20, 2013 (collectively, the "Terminated Agreements"), each such undersigned holder of capital stock consents and agrees to (a) the waiver of any applicable advance notice requirements relating to the Merger or the Recapitalization and A&R Charter (both as defined below) contained in such Terminated Agreement, (b) the termination of such Terminated Agreements, and (c) that any rights and obligations such undersigned holder of capital stock may have under such Terminated Agreements shall terminate upon the termination of each of the Terminated Agreements; provided, however, that Sections 5 and 6 of the IRA shall survive and remain in full force and effect after the consummation of the Merger; provided further that Sections 5 and 6 of the IRA shall terminate automatically upon the expiration of all dissenters' rights.

FURTHER RESOLVED, that each of the undersigned holders of capital stock hereby irrevocably waives any notice or approval with respect to the Merger, the Merger Agreement and the transactions contemplated thereby to which such stockholders may be entitled pursuant to the Company's Third Amended and Restated Certificate of Incorporation or the Bylaws, as amended, of the Company or the DGCL, any agreements by and among the Company and any or all of such undersigned holder of capital stock or otherwise; and

FURTHER RESOLVED, that each of the undersigned holders of capital stock hereby affirmatively and irrevocably waives any appraisal or dissenters' rights such undersigned holder of capital stock may have arising in connection with the Merger under Section 262 of the DGCL and under any other applicable law or regulation with respect to such holder's shares of capital stock in connection with the Merger.

AMENDED AND RESTATED CHARTER

WHEREAS, the Company has previously authorized and approved (i) those certain convertible promissory notes of the Company that were issued during late 2015 in the aggregate principal amount of $5,316,245.04 (the "2015 Notes"), (ii) those certain convertible promissory notes of the Company that were issued during late 2016 in the aggregate principal amount of $3,945,336.62 (the "2016 Notes") and (iii) those certain convertible promissory notes of the Company that were issued during late 2017 and early 2018 in the aggregate principal amount of $1,141,524.27 (the "2017 Notes" and together with the 2016 Notes and the 2015 Notes, the "Notes");

WHEREAS, for tax purposes, the Company desires to amend the Notes to provide that immediately prior to the closing of the transactions contemplated by the Merger Agreement, the Notes shall automatically be converted into shares of a New Series C Preferred Stock of the Company, par value $0.00001 per share ("New Series C Preferred Stock") with an aggregate liquidation preference equal to the aggregate amount of principal, accrued interest and premium the holders of the Notes are entitled to in connection with the transactions contemplated by the Merger Agreement (the "Recapitalization");

WHEREAS, in order to give effect to the Recapitalization, the Board desires to amend and restate in its entirety the Company's Third Amended and Restated Certificate of Incorporation (the "Charter") to provide for the New Series C Preferred Stock substantially in the form attached hereto as Exhibit B (the "A&R Charter") and recommended that the stockholders of the Company approve the A&R Charter.

NOW THEREFORE BE IT RESOLVED, that each such undersigned holder of capital stock consents and agrees to the waiver of any applicable advance notice requirements or participation or preemptive rights relating to the Recapitalization in the IRA, the Charter and the Notes, and that the A&R Charter be, and it hereby is, adopted and approved in all respects.

This consent may be executed in multiple counterparts, each of which shall be deemed an original and together constitute one and the same consent.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Consent in Lieu of a Special Meeting (the "Consent") on the "Date of Execution" set forth below. This Consent shall be effective immediately after the execution and delivery of the Merger Agreement by each of the parties thereto (the "Effective Time"); provided, that if the Effective Time shall have already occurred before the execution and delivery of this Consent in accordance with Section 228 of the DGCL, this Consent shall be effective immediately. This Consent shall be deemed revoked if it is has not become effective within 60 days after the Date of Execution set forth below, which Date of Execution is the date on which provision for the effectiveness of this Consent has been made. This Consent may also be revoked by the undersigned at any time prior to its effectiveness. By signature hereto, the undersigned agrees to consent with respect to all of the shares of capital stock held of record by the undersigned on the books of the Company.

This written consent may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, shall be filed with the records of the meetings of the stockholders of the Company and shall constitute, for all purposes, votes at a special meeting of such stockholders. This written consent may also be acknowledged and agreed to by electronic transmission in accordance with Section 228(d) of the DGCL.

Date of Execution :

Name:
Title:

Exhibit A
Merger Agreement

Exhibit B
A&R Charter

Exhibit D

Form of Escrow Agreement

[*See attached*]

Execution Version

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Escrow Agreement") is entered into and effective this 28th day of March, 2018, by and among SunTrust Bank (the "Escrow Agent"), pSivida Corp., a Delaware corporation ("Parent") and Shareholder Representative Services LLC, a Colorado limited liability company (the "Stockholders' Agent" and together with the Parent, the "Parties") solely in its capacity as the representative of the securityholders of the Company (the "Securityholders");

WHEREAS, Parent and the Stockholders' Agent have entered into that certain Agreement and Plan of Merger, dated as of March 28, 2018 (the "Merger Agreement"), by and among Parent, Oculus Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Parent ("Merger Sub"), Icon Bioscience, Inc., a Delaware corporation (the "Company") and the Stockholders' Agent, whereby Parent will acquire the Company through a merger of Merger Sub with and into the Company with the Company surviving as a direct wholly owned subsidiary of Parent (the "Merger"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Merger Agreement.

WHEREAS, Parent and the Stockholders' Agent desire for the Escrow Agent to open an account (the "Escrow Account") as set forth in the Merger Agreement, and into which Parent will deposit funds to satisfy potential obligations of the Securityholders pursuant to the terms and conditions set forth in the Merger Agreement, and to be held, disbursed and invested by the Escrow Agent in accordance with this Escrow Agreement.

WHEREAS, Parent and the Stockholders' Agent have entered into that certain Payments Administration Agreement, dated as of March 28, 2018 by and among Acquiom Financial LLC ("Payments Administrator"), Parent and the Stockholders' Agent (the "Payments Agreement") pursuant to which Payments Administrator has established the account described on Exhibit B (the "Paying Account") for the purpose of receiving funds disbursed pursuant to this Escrow Agreement.

NOW, THEREFORE, in consideration of the premises herein, the parties hereto agree as follows:

I. Terms and Conditions

1.1. Parent and the Stockholders' Agent hereby appoint the Escrow Agent as their escrow agent and the Escrow Agent hereby accepts its duties as provided herein. The initial escrow deposit into the Escrow Account will be $1,500,000 (the "Escrow Amount"). The term "Escrow Fund" as used herein refers to the Escrow Amount, plus all interest, dividends, income or other earnings thereon from the investment thereof in accordance with the terms of this Escrow Agreement, less disbursements or payments thereof authorized and made hereunder.

1.2 Parent shall remit the Escrow Amount to the Escrow Agent promptly after the Effective Time, using the wire instructions set forth below, to be held by the Escrow Agent and disbursed and invested as provided in this Escrow Agreement.

SunTrust Bank
ABA: 061000104
Account: 9443001321
Account Name:
Escrow Services
Reference:
SRS/pSivida Corp
Attention: Byron
Roldan

1.3. Within two Business Days (except as provided below) of receipt of written instructions in substantially the same form as that attached hereto as Exhibit D ("Joint Instructions"), signed by an authorized representative of each of Parent and the Stockholders' Agent (a list of whom are provided in Exhibit A-1 and Exhibit A-2), the Escrow Agent shall disburse funds held in the Escrow Account as provided in such Joint Instructions and this Section 1.3, but only to the extent that funds are collected and available. The Joint Instructions shall include the amount to be disbursed and shall identify the party to whom the disbursement shall be made, which shall be either Parent or the Payments Administrator. Disbursements to Parent pursuant to Joint Instructions shall be made in accordance with the payment instructions set forth in such Joint Instructions. Disbursements to the Payments Administrator pursuant to Joint Instructions shall be deposited by the Escrow Agent into the account designated in Exhibit B on the same Business Day as the Escrow Agent receives such Joint Instructions, or the next Business Day if such Joint Instructions are received after 3:00 p.m. Eastern Time. Parent and the Stockholders' Agent acknowledge and agree that the Escrow Agent is not a party to, and has no duties or obligations under, the Payments Agreement, that all references in this Escrow Agreement to the Payments Agreement are for convenience only, and that the Escrow Agent shall have no implied duties beyond the express duties set forth in this Escrow Agreement. The Escrow Agent shall have no responsibility for, and is hereby relieved of all liability to Parent, the Stockholders' Agent and all other persons and entities with respect to, the manner in which funds are applied or disbursed from the Paying Account as directed by the Payments Administrator. The sole responsibility of the Escrow Agent with respect to funds which Parent and the Stockholders' Agent direct to be disbursed to the Paying Account is to deposit such funds into the account designated in Exhibit B. For purposes of this Escrow Agreement, "Business Day" shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth in Section 4.5 is authorized or required by law or executive order to remain closed.

1.4 In the event that Parent provides a formal notice to the Stockholders' Agent regarding a claim against the funds in the Escrow Account, the Parent shall simultaneously deliver a copy of such notice to the Escrow Agent; *provided, however*, that the Escrow Agent shall have no duty to act upon any such notice (which shall be considered informational only with respect to the Escrow Agent), and the Escrow Agent shall in all cases act only in accordance with Section 2.7 with respect to any disagreement between Parent and the Stockholders' Agent.

II. Provisions as to the Escrow Agent

2.1. This Escrow Agreement expressly and exclusively sets forth the duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent. In performing its duties under this Escrow Agreement, or upon the claimed failure to perform its duties, the Escrow Agent shall have no liability except for the Escrow Agent's fraud, willful misconduct or gross negligence. In no event shall the Escrow Agent be liable for incidental, indirect, special, or punitive damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. The Escrow Agent shall have no liability with respect to the transfer or distribution of any funds effected by the Escrow Agent pursuant to wiring or transfer instructions provided to the Escrow Agent in accordance with the provisions of this Escrow Agreement. Any wire transfers of funds made by the Escrow Agent pursuant to this Escrow Agreement will be made subject to and in accordance with the Escrow Agent's usual and ordinary wire transfer procedures in effect from time to time. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement. The Escrow Agent shall not be obligated to take any legal action or to commence any proceedings in connection with this Escrow Agreement or any property held hereunder or to appear in, prosecute or defend in any such legal action or proceedings.

2.2. Parent and the Stockholders' Agent acknowledge and agree that the Escrow Agent acts hereunder as a depository only, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Escrow Agreement or any part thereof, or of any person executing or depositing such subject matter.

2.3. This Escrow Agreement constitutes the entire agreement between the Escrow Agent and Parent and the Stockholders' Agent in connection with the subject matter of this Escrow Agreement, and no other agreement entered into between Parent and the Stockholders' Agent, or either of them, including, without limitation, the Payments Agreement and the Merger Agreement, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be deposited with the Escrow Agent or the Escrow Agent may have knowledge thereof.

2.4. The Escrow Agent shall in no way be responsible for nor shall it be its duty to notify any party hereto or any other party interested in this Escrow Agreement of any payment required or maturity occurring under this Escrow Agreement or under the terms of any instrument deposited therewith unless such notice is explicitly provided for in this Escrow Agreement.

2.5. The Escrow Agent shall be protected in acting upon any written instruction, notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which the Escrow Agent in good faith reasonably believes to be genuine and what it purports, to be, including, but not limited to, items directing investment or non-investment of funds, items requesting or authorizing release, disbursement or retainage of the subject matter of this Escrow Agreement and items amending the terms of this Escrow Agreement.

2.6. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent and any director, officer or employee of the Escrow Agent may become pecuniarily interested in any transaction in which any of the other parties hereto may be interested and may contract and lend money to any such party and otherwise act as fully and freely as though it were not escrow agent under this Escrow Agreement. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for any such party. The Escrow Agent may at its own cost consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the advice of such counsel.

2.7. In the event of any disagreement between Parent and the Stockholders' Agent resulting in adverse claims or demands being made in connection with the matters covered by this Escrow Agreement, or in the event that the Escrow Agent, in good faith, be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not be or become liable in any way or to any party for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to refrain from acting until (i) the rights of Parent and the Stockholders' Agent shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjudged and all doubt resolved by agreement among Parent and the Stockholders' Agent, and the Escrow Agent shall have been notified thereof in writing signed by Parent and the Stockholders' Agent. Notwithstanding the preceding, the Escrow Agent may in its discretion obey the order, judgment, decree or levy of any court, or of an agency of the United States or any political subdivision thereof, or of any agency of any State of the United States or of any political subdivision thereof, and the Escrow Agent is hereby authorized in its sole discretion, to comply with and obey any such orders, judgments, decrees or levies. The rights of the Escrow Agent under this sub-paragraph are cumulative of all other rights which it may have by law or otherwise.

In the event of any disagreement or doubt, as described above, the Escrow Agent shall have the right, in addition to the rights described above and at the election of the Escrow Agent, to tender into the registry or custody of any court having jurisdiction, all funds and property held under this Escrow Agreement, and the Escrow Agent shall have the right to take such other legal action as may be appropriate or necessary, in the sole discretion of the Escrow Agent. Upon such tender, Parent and the Stockholders' Agent agree that the Escrow Agent shall be discharged from all further duties under this Escrow Agreement.

2.8. Parent and the Stockholders' Agent (solely on behalf of the Securityholders and in its capacity as the Stockholders' Agent, not in its individual capacity) jointly and severally agree to defend, indemnify and hold harmless the Escrow Agent and each of the Escrow Agent's officers, directors, agents and employees (the "Indemnified Parties") from and against any and all losses, liabilities, claims made by any Party or any other person or entity, damages, expenses and costs (including, without limitation, attorneys' fees and expenses) of every nature whatsoever (collectively, "Losses") which any such Indemnified Party may incur and that arise directly or indirectly from the Escrow Agent's obligations under this Escrow Agreement or that arise directly or indirectly by virtue of the Escrow Agent's undertaking to serve as the Escrow Agent hereunder; *provided, however*, that no Indemnified Party shall be entitled to indemnity with respect to Losses

that have been finally adjudicated by a court of competent jurisdiction to have been directly caused by such Indemnified Party's fraud, gross negligence or willful misconduct. The provisions of this section shall survive the termination of this Escrow Agreement and any resignation or removal of the Escrow Agent.

2.9. Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business of the Escrow Agent may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

2.10. The Escrow Agent may resign at any time from its obligations under this Escrow Agreement by providing written notice to Parent and the Stockholders' Agent. Such resignation shall be effective on the date set forth in such written notice, which shall be no earlier than thirty (30) days after such written notice has been furnished. Parent and the Stockholders' Agent shall promptly appoint a successor escrow agent. In the event no successor escrow agent has been appointed on or prior to the date such resignation is to become effective, the Escrow Agent shall be entitled to tender into the custody of any court of competent jurisdiction all funds and other property then held by the Escrow Agent hereunder and the Escrow Agent shall thereupon be relieved of all further duties and obligations under this Escrow Agreement. The Escrow Agent shall have no responsibility for the appointment of a successor escrow agent hereunder.

III. Compensation of the Escrow Agent

3.1. The Escrow Agent shall not charge fees to Parent and the Stockholders' Agent for the services provided by it hereunder; *provided*, *however*, that the terms of this paragraph shall not in any way limit the rights of the Escrow Agent to indemnification as set forth in this Escrow Agreement.

IV. Miscellaneous

4.1. The Escrow Agent shall make no disbursement, investment or other use of funds until and unless it has collected funds. The Escrow Agent shall not be liable for collection items until such proceeds have been received or the Federal Reserve has given the Escrow Agent credit for the funds.

4.2. The Escrow Agent shall invest all funds held pursuant to this Escrow Agreement in accordance with Exhibit C. Instructions to make any other investment must be in writing and signed by each of the Parties. Parent and the Stockholders' Agent recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relating to the investment of moneys held hereunder or the purchase, sale, retention or other disposition of any investment, and the Escrow Agent shall not be liable to Parent or the Stockholders' Agent or any other person or entity for any loss incurred in connection with any such investment unless caused by the Escrow Agent's fraud, willful misconduct or gross negligence. The Escrow Agent is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Escrow Agent, Payments Administrator and/or any of their respective affiliates may receive compensation with respect to any investment directed hereunder including without limitation charging any applicable agency fee in connection with each transaction. The Escrow Agent shall use its best efforts to invest funds on a timely basis upon

receipt of such funds; *provided, however*, that the Escrow Agent shall in no event be liable for compensation to Parent or the Stockholders' Agent or any other person or entity related to funds which are held un-invested or funds which are not invested timely. The Escrow Agent is authorized and directed to sell or redeem any investments as it deems necessary to make any payments or distributions required under this Escrow Agreement.

4.3 The Escrow Agent shall provide monthly reports of transactions and holdings to Parent and the Stockholders' Agent as of the end of each month, at the address provided by Parent and the Stockholders' Agent.

4.4 Parent and the Stockholders' Agent agree that, subject to the terms and conditions of this Escrow Agreement, the owner of the funds held in Escrow is the Parent and all interest and other income from the investment of the funds shall be reported as having been earned by Parent as of the end of the calendar year in which it was earned, whether or not such interest and other income was disbursed during such calendar year, to the extent required by the United States Internal Revenue Service ("IRS"). In light of the obligation of Parent to pay the Tax due with respect to such interest and other income and notwithstanding any provision of this Agreement to the contrary, the Escrow Agent shall, within ten days following the end of each calendar quarter, pay and disburse to Parent an amount equal to 26 percent of the interest and other income accruing during such calendar quarter on the funds held by the Escrow Agent pursuant to this Agreement. On or before the execution and delivery of this Escrow Agreement, each of Parent and Stockholders' Agent shall provide to the Escrow Agent a correct, duly completed, dated and executed current IRS Form W-9 or Form W-8, whichever is appropriate or any successor forms thereto, in a form and substance satisfactory to the Escrow Agent including appropriate supporting documentation and/or any other form, document, and/or certificate required or reasonably requested by the Escrow Agent to validate the form provided. Notwithstanding anything to the contrary herein provided, except for the delivery and filing of tax information reporting forms required pursuant to the Internal Revenue Code of 1986, as amended, to be delivered and filed with the IRS by the Escrow Agent, as escrow agent hereunder, the Escrow Agent shall have no duty to prepare or file any Federal or state tax report or return with respect to any funds held pursuant to this Escrow Agreement or any income earned thereon. Parent and the Stockholders' Agent (solely on behalf of the Securityholders and in its capacity as the Stockholders' Agent, not in its individual capacity), jointly and severally, agree to indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the funds held under this Escrow Agreement or any earnings or interest thereon unless such tax, late payment, interest, penalty or other cost or expense was finally adjudicated by a court of competent jurisdiction to have been directly caused by the fraud, gross negligence or willful misconduct of the Escrow Agent. The indemnification provided in this section is in addition to the indemnification provided to the Escrow Agent elsewhere in this Escrow Agreement and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

4.5. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (a) upon receipt if delivered personally, (b) one (1) Business Day after being sent by commercial overnight courier service, or (c) upon transmission if sent via facsimile or email with confirmation of receipt to the parties made by the recipient at the following addresses (or at such other address for a party as shall be specified upon like notice):

If to the Escrow Agent:

SunTrust Bank
Attn: Escrow Services 919
East Main Street, 7th Floor
Richmond, Virginia 23219
Client Manager: Byron Roldan
Telephone: (804) 782-5404
Facsimile: (804) 225-7141
Email: byron.roldan@suntrust.com

with a copy (which shall not constitute notice) to:

Acquiom Clearinghouse LLC
950 17th Street, Suite 1400
Denver, CO 80202
Attention: Heather Kelly
Telephone: (415) 363-6080; (303) 222-2080
Facsimile: (720) 554-7828
Email: hkelly@srsacquiom.com, cc: paymentsadministration@srsacquiom.com

If to Parent:

pSivida Corp.
480 Pleasant Street
Watertown, MA 02472
Attention: John D. Mercer, Corporate Counsel
Facsimile: (617) 926-5050
Email: jmercer@psivida.com

with a copy (which shall not constitute notice) to:

Hogan Lovells US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Attention: Steven J. Abrams
Facsimile: (267) 675-4601
Email: steve.abrams@hoganlovells.com

If to the Stockholders' Agent:

Shareholder Representative Services LLC
950 17th Street, Suite 1400
Denver, CO 80202
Attention: Managing Director
Telephone: (303) 648-4085
Facsimile: (303) 623-0294
Email: deals@srsacquiom.com

Any party may unilaterally designate a different address by giving notice of each change in the manner specified above to each other party.

4.6. This Escrow Agreement is intended to be construed according to the laws of the State of Delaware. Except as permitted in Section 2.9, neither this Escrow Agreement nor any rights or obligations hereunder may be assigned by any party hereto without the express written consent of each of the other parties hereto. This Escrow Agreement shall inure to and be binding upon the parties hereto and their respective successors, heirs and permitted assigns.

4.7. This Escrow Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. Any waiver of any of the terms or conditions of this Escrow Agreement must be in writing and must be duly executed by or on behalf of the party to be charged with such waiver. Except as expressly set forth in this Escrow Agreement, the failure of a party to exercise any of its rights hereunder or to insist upon strict adherence to any term or condition hereof on any one occasion shall not be construed as a waiver or deprive that party of the right thereafter to insist upon strict adherence to the terms and conditions of this Escrow Agreement at a later date. Further, no waiver of any of the terms and conditions of this Escrow Agreement shall be deemed to or shall constitute a waiver of any other term of condition hereof (whether or not similar).

4.8. In the event that any provision of this Escrow Agreement, or the application thereof becomes, or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Escrow Agreement, and the application of such provision to other Persons or circumstances other than those as to which it is determined to be illegal, void or unenforceable, will not be impaired or otherwise affected and will continue in full force and effect and be enforceable to the fullest extent permitted by Applicable Law.

4.9. This Escrow Agreement is for the sole benefit of the Indemnified Parties, Parent, the Stockholders' Agent and the Escrow Agent, and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

4.10. No party to this Escrow Agreement shall be liable to any other party hereto for losses due to, or if it is unable to perform its obligations under the terms of this Escrow Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control, it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

4.11. This Escrow Agreement shall terminate upon the distribution of all funds and property held in the Escrow Account under this Escrow Agreement or upon the earlier joint written instructions of the parties hereto (other than the Escrow Agent).

4.12. All titles and headings in this Escrow Agreement are intended solely for convenience of reference and shall in no way limit or otherwise affect the interpretation of any of the provisions hereof.

4.13. This Escrow Agreement may be executed in one or more counterparts, including by facsimile or other electronic transmission (including e-mail of a PDF), each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Each party shall be permitted to rely upon signatures delivered or transmitted by facsimile, PDF or other electronic transmission to the same extent and effect as if they were original signatures.

4.14. Contemporaneously with the execution and delivery of this Escrow Agreement, each of the parties to this Escrow Agreement (other than the Escrow Agent) shall execute and deliver to the Escrow Agent a Certificate of Incumbency substantially in the form of Exhibit A-1 and A-2 hereto (a "Certificate of Incumbency") for the purpose of establishing the identity and authority of persons entitled to issue notices, instructions or directions to the Escrow Agent on behalf of each such party. Until such time as the Escrow Agent shall receive an amended Certificate of Incumbency replacing any Certificate of Incumbency theretofore delivered to the Escrow Agent, the Escrow Agent shall be fully protected in reasonably relying in good faith, without further inquiry, on the most recent Certificate of Incumbency furnished to the Escrow Agent. Whenever this Escrow Agreement provides for joint written notices, joint written instructions or other joint actions to be delivered to the Escrow Agent, the Escrow Agent shall be fully protected in reasonably relying in good faith, without further inquiry, on any joint written notice, instructions or action executed by persons named in such Certificate of Incumbency.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. When a party opens an account, the Escrow Agent will ask for each party's name, address, date of birth, or other appropriate information that will allow the Escrow Agent to identify such party. The Escrow Agent may also ask to see each party's driver's license or other identifying documents.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as of the date first above written.

SUNTRUST BANK, as the Escrow Agent

By: _____
Name:
Title:

PSIVIDA CORP.

By: _____
Name:
Title:

SHAREHOLDER REPRESENTATIVE SERVICES LLC, solely in its capacity as the Stockholders' Agent

By: _____
Name:
Title:

EXHIBIT A-1

Certificate of Incumbency
(List of Authorized Representatives)

Client Name: pSivida Corp.

As an authorized officer of the above referenced entity, I hereby certify that each person listed below is an authorized signor for such entity, and that the title and signature appearing beside each name is true and correct.

Name	Title	Signature	Contact Number	* Secondary Contact Number**
Nancy Lurker	President and Chief Executive Officer			
Leonard S. Ross	VP, Finance and Chief Accounting Officer			

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized

_____ officer on:***.
Date

By: _____
Name: John D. Mercer
Title: Corporate Counsel and Secretary

* In order to comply with UCC requirements regarding outgoing wire transfers, the Escrow Agent is required to perform a verification call-back using the number provided here upon receipt of release instructions.

** Please provide a secondary number in case the authorized signer is not reachable at the primary Contact Number.

*** The specimen signature page of each authorized signer (including those delivered in counterpart) must include the signature of the witnessing authorized officer. It is permissible for an authorized signer to witness and date his/her own signature if such signer is also an authorized officer of the referenced entity.

EXHIBIT A-2

Certificate of Incumbency
(List of Authorized Representatives)

Client Name: SHAREHOLDER REPRESENTATIVE SERVICES LLC

As an authorized officer of the above referenced entity, I hereby certify that each person listed below is an authorized signor for such entity, and that the title and signature appearing beside each name is true and correct.*

Name	Title	Signature	Contact Number
Chris	Managing		
Letang Eric	Director		
Paul	Managing		
Koenig	Director		

* *Please complete call-backs in the order indicated above (i.e., call Chris Letang first, Eric Martin second, etc.).*

As an authorized officer of the above referenced entity, I hereby certify that each person listed below is authorized to sign this Escrow Agreement on behalf of such entity, but is not authorized for providing any other direction on behalf of such entity to the Escrow Agent, and that the title and signature appearing beside each name is true and correct.

Name	Title	Signature	Contact Number
Sam Riffe	Executive Director		

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer on:

_____.
Date

By:
Its:

EXHIBIT B

Wire Instructions for Paying Account:

[*To be provided by Payments Administrator.*]

EXHIBIT C

The Parties authorize and direct the Escrow Agent to invest all deposits pursuant to this Escrow Agreement as follows:

Escrow Fund:
Check one:

AXA Equitable Escrow Shield Plus

SunTrust Non-Interest Deposit Option

SunTrust Institutional Deposit Option

The investments in the SunTrust Institutional Deposit Option and the SunTrust Non-Interest Deposit Option are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (the "FDIC"), in the standard FDIC insurance amount of $250,000, including principal and accrued interest, and are not secured. The SunTrust Institutional Deposit Option, SunTrust Non-Interest Deposit Option and AXA Equitable Escrow Shield Plus are more fully described in materials which have been furnished to the Parties, and the Parties acknowledge receipt of such materials. By electing the investment election above, the Parties hereby authorize the Escrow Agent to enter into any required documentation, on their behalf, to effect such investment election, consistent with the materials furnished to the Parties. Any investment earnings and income on funds held in the SunTrust Institutional Deposit Option shall become part of the account and shall be disbursed in accordance with this Escrow Agreement. Any investment earnings and income on funds invested in AXA Equitable Escrow Shield Plus shall become part of the account upon the final release of funds in the Escrow Fund and shall be disbursed in accordance with this Escrow Agreement.

PSIVIDA CORP.

By: _____
Name:
Title:

SHAREHOLDER REPRESENTATIVE SERVICES LLC, solely in its capacity as the Stockholders' Agent

By: _____
Name:
Title:

EXHIBIT D

Joint Written Instructions to Escrow Agreement

SunTrust Bank
Attn: Escrow Services
919 East Main Street, 7th Floor
Richmond, Virginia 23219
Client Manager: Byron Roldan
Telephone: (804) 855-9414
Facsimile: (804) 225-7141
Email: byron.roldan@suntrust.com

, 201[ ]

Joint Written Instructions

Ladies and Gentlemen:

Reference is made to the Escrow Agreement dated as of [____] (the "Escrow Agreement") by and between pSivida Corp., Shareholder Representative Services LLC and you.

Pursuant to the Escrow Agreement, the undersigned hereby instruct you to disburse from the Escrow Account (as defined in the Escrow Agreement), to [__ _____] the amount of $[_____], by wire transfer to the account identified on Annex I hereto.

BY:

By: _____
Its: _____

BY:

By: _____
Its: _____

ANNEX I

[To be provided upon delivery of Joint Written Instruction]

CONFIDENTIAL

Exhibit E

Form of Amendment to Notes

[*See attached*]

CONFIDENTIAL

Execution Version

AMENDMENT TO CONVERTIBLE NOTES

This AMENDMENT TO CONVERTIBLE NOTES (this "Amendment") is made and entered into by and among Icon Bioscience, Inc., a Delaware corporation (the "Company"), and the undersigned parties (the "Holders") representing the holders of more than 50% of the aggregate outstanding principal amount of (i) that series of convertible promissory notes that were issued by the Company during 2015 in the aggregate principal amount of $5,316,245.04 (the "2015 Notes"), (ii) that series of convertible promissory notes that were issued by the Company during 2016 in the aggregate principal amount of $3,945,336.62 (the "2016 Notes") and (iii) those certain convertible promissory notes that were issued by the Company during late 2017 and early 2018 in the aggregate principal amount of $1,141,524.27 (the "2017/2018 Notes", and together with the 2016 Notes and the 2015 Notes, the "Notes"). Capitalized terms used, but not defined herein, shall have the meanings given to them in the Notes.

BACKGROUND

WHEREAS, the Company intends to enter into an Agreement and Plan of Merger (the "Merger Agreement"), by and among pSivida Corp., a Delaware corporation ("Parent"), Oculus Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), the Company and Shareholder Representative Services LLC, a Colorado limited liability, solely in its capacity as the representative of the Company securityholders (the "Stockholders' Agent"), pursuant to which, among other things, Merger Sub will merge with and into the Company and the Company will become a wholly owned subsidiary of Parent (the "Merger"); and

WHEREAS, the Company and the Holders wish to amend the Notes to provide that immediately prior to the closing of the Merger, the Notes shall automatically be converted into shares of a new Series C Preferred Stock of the Company, par value $0.00001 per share ("New Series C Preferred Stock"), with an aggregate liquidation preference equal to the aggregate amount of principal, accrued interest and premium the holders of the Notes are entitled to in connection with the Merger.

NOW, THEREFORE, the Company and the Holders hereby agree as follows:

AGREEMENT

1. Conversion.

a. Section 3(a) of the 2015 Notes shall be amended and restated in its entirety to read as follows:

"If the Company should enter into an Agreement and Plan of Merger, (the "Merger Agreement"), by and among the Company, pSivida Corp., a Delaware corporation ("Parent"), Oculus Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), the Company and Shareholder Representative Services LLC, a Colorado limited liability, solely in its capacity as the representative of the Company securityholders, whereby Merger Sub will merge with and into the Company and the Company will become a wholly owned subsidiary of Parent (the "Merger"), then immediately prior the consummation of the Merger, this Note shall be cancelled, terminated and extinguished and shall automatically convert into that number of shares of Series C Preferred Stock of the Company, par value $0.00001 per share, equal to the sum of (i) two hundred percent (200%) of the then outstanding Principal amount of this Note and (ii) all accrued but unpaid Interest thereon."

b. Section 3(a) of the 2016 Notes and the 2017/2018 Notes shall be amended and restated in its entirety to read as follows:

"If the Company should enter into an Agreement and Plan of Merger, (the "Merger Agreement"), by and among the Company, pSivida Corp., a Delaware corporation ("Parent"), Oculus Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), the Company and Shareholder Representative Services LLC, a Colorado limited liability, solely in its capacity as the representative of the Company securityholders, whereby Merger Sub will merge with and into the Company and the Company will become a wholly owned subsidiary of Parent (the "Merger"), then immediately prior the consummation of the Merger, this Note shall be cancelled, terminated and extinguished and shall automatically convert into that number of shares of Series C Preferred Stock of the Company, par value $0.00001 per share, equal to the sum of (i) three hundred percent (300%) of the then outstanding Principal amount of this Note and (ii) all accrued but unpaid Interest thereon."

c. Section 3(b) of the Notes shall be removed and deleted in its entirety.

d. Section 3(c) of the Notes shall be amended and restated in its entirety to read as follows:

"Fractional shares shall be issued upon conversion of this Note. Upon conversion of this Note in accordance with this Section 3, Company shall be forever released from all its obligations and liabilities under this Note."

2. Other. The Notes shall remain in full force and effect in all respects except as modified by this Amendment. Upon execution of this Amendment, the Holders shall surrender to the Stockholders' Agent any Notes held by the Holder for cancellation and conversion into shares of New Series C Preferred Stock in accordance with the terms of this Amendment.

3. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

4. Governing Law. This Amendment and all actions arising out of or in connection with this Amendment shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflict of laws provisions of the State of California or any other state.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company and the Holders have executed this Amendment to Convertible Notes as of the dates set forth below.

COMPANY:

ICON BIOSCIENCE, INC.

By:
Name:
Title:

Dated:

IN WITNESS WHEREOF, the Company and the Holders have executed this Amendment to Convertible Notes as of the dates set forth below.

HOLDERS:

IF AN ENTITY:

Name of Entity (*print*):

By:

Name:

Title: _____

Dated:

IF AN INDIVIDUAL:

By (*sign*):

Name

(*print*):

Dated:

CONFIDENTIAL

Exhibit F

Certificate of Merger

[*See attached***]**

CONFIDENTIAL

CERTIFICATE OF MERGER
OF
OCULUS MERGER SUB, INC.
WITH AND INTO
ICON BIOSCIENCE, INC.

Icon Bioscience, Inc., a Delaware corporation (the "***Company***"), does hereby certify to the following facts relating to the merger (the "***Merger***") of Oculus Merger Sub, Inc., a Delaware corporation ("***Merger Sub***"), with and into the Company, with the Company continuing as the surviving corporation of the Merger (the "***Surviving Corporation***"):

FIRST:	The Company and Merger Sub are the constituent corporations in the Merger, and each is a corporation incorporated pursuant to the laws of the State of Delaware.
SECOND:	An Agreement and Plan of Merger (the "***Merger Agreement***"), has been approved, adopted, executed and acknowledged by the Company and by Merger Sub in accordance with the provisions of subsection (c) of Section 251 of the Delaware General Corporation Law (the "**DGCL**").
THIRD:	The surviving corporation of the Merger shall be Icon Bioscience, Inc.
FOURTH:	Upon the effectiveness of the Merger, the Certificate of Incorporation of the Surviving Corporation shall be amended and restated to read in its entirety as set forth in **Attachment A** attached hereto and shall thereupon be the certificate of incorporation of the Surviving Corporation until further amended in accordance with the provisions of the DGCL.
FIFTH:	The executed Merger Agreement is on file at the principal place of business of the Surviving Corporation, at 480 Pleasant Street, Suite B300, Watertown, MA 02472.
SIXTH:	A copy of the executed Merger Agreement will be furnished by the the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation of the Merger.
SEVENTH:	The Merger shall become effective upon the filing of this Certificate of Merger with the Delaware Secretary of State.

[*Signature Page Follows*]

IN WITNESS WHEREOF, this certificate is signed by an authorized officer of the Surviving Corporation on March [•], 2018.

Icon Bioscience, Inc.

By: _____
Name:
Title:

EXHIBIT A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

ICON BIOSCIENCE, INC.

FIRST: The name of the corporation is Icon Bioscience, Inc. (the "**Corporation**").

SECOND: The address of the registered office of the Corporation in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended (the "**DGCL**").

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is [one thousand (1,000)] shares of common stock, $0.01 par value per share.

FIFTH: The Corporation is to have perpetual existence.

SIXTH: The business and affairs of the Corporation shall be managed by or under the direction of a board of directors. The directors of the Corporation shall serve until the annual meeting of the stockholders of the Corporation or until their successor is elected and qualified. The number of directors of the Corporation shall be such number as from time to time shall be fixed by, or in the manner provided in, the bylaws of the Corporation. Unless and except to the extent that the bylaws of the Corporation shall otherwise require, the election of the directors of the Corporation need not be by written ballot. Except as otherwise provided in this Certificate of Incorporation, each director of the Corporation shall be entitled to one vote per director on all matters voted or acted upon by the board of directors.

SEVENTH: The Corporation shall, to the maximum extent permitted from time to time under the law of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party to any threatened, pending, or completed action, suit, proceeding, or claim, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was or has agreed to be a trustee, director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a trustee, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and expenses), judgments, fines, penalties and amounts paid in settlement incurred in connection with the investigation, preparation to defend or defense of any such action, suit, proceeding or claim. Such indemnification shall not be exclusive of other indemnification rights arising under any bylaw, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person.

EIGHTH: No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for the breach of fiduciary duty as a director; provided, however, that the foregoing clause shall not apply to any liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derives an improper personal benefit.

NINTH: In furtherance and not in limitation of the powers conferred by the DGCL, the board of directors of the Corporation is expressly authorized and empowered to adopt, amend and repeal the bylaws of the Corporation.

TENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

Exhibit G

Transmittal Letter

[*See attached***]**

CONFIDENTIAL

LETTER OF TRANSMITTAL

SUBMITTED IN CONNECTION WITH PAYMENT FOR SECURITIES OF

ICON BIOSCIENCE, INC.

This Letter of Transmittal is being delivered to you (the "Undersigned") in connection with the merger (the "Merger") of Oculus Merger Sub, Inc., a Delaware corporation ("Merger Sub") and wholly owned subsidiary of pSivida Corp., a Delaware corporation ("Parent"), with and into Icon Bioscience, Inc., a Delaware corporation (the "Company"), pursuant to which the Company will survive the Merger as a wholly owned subsidiary of Parent. The Merger is expected to close by March 28, 2018.

Pursuant to the Agreement and Plan of Merger to be entered into by and among Parent, Merger Sub, the Company, and Shareholder Representative Services LLC, solely in its capacity as the Stockholder Representative (the "Merger Agreement"), the Undersigned surrenders herewith the Certificate(s) representing shares of Company Common Stock and Company Preferred Stock, as applicable (the "Securities"), in exchange for the Merger Consideration (as defined in the Merger Agreement) applicable to such Securities. Capitalized terms not defined herein are defined in the Merger Agreement.

To receive payment of the applicable Merger Consideration represented by the Undersigned's Securities, the Undersigned must complete and sign this Letter of Transmittal, including the applicable exhibits, and deliver this Letter of Transmittal to the Payment Administrator.

By execution and delivery of this Letter of Transmittal, the Undersigned understands, acknowledges and agrees to the following that he, she or it has reviewed and understands the adjustment, consideration, indemnification and escrow provisions of the Merger Agreement, and the Undersigned's signature on this Letter of Transmittal constitutes the Undersigned's:

(i) acknowledgement that he, she or it is bound by the terms of the Merger Agreement and, by virtue of being a Company Securityholder, an "Indemnifying Person" for purposes of Article IX of the Merger Agreement and, accordingly, is intended to be bound by, solely in his, her or its capacity as a Company Securityholder and Indemnifying Person, Article IX of the Merger Agreement as it relates to the Company Securityholders and Indemnifying Persons; and

SRS ACQUIOM

(ii) acknowledgement of the appointment of Shareholder Representative Services LLC, as the representative, attorney-in-fact and exclusive agent for and on behalf of the Company Securityholders to act as the Stockholders' Agent in all respects as contemplated by the Merger Agreement, including Section 9.4 of the Merger Agreement, and acknowledges and agrees to the exculpation and indemnification provisions in favor of the Stockholders' Agent set forth in the Merger Agreement. Without limiting the foregoing, the Undersigned agrees that the information contained in this Letter of Transmittal may be shared with Parent and the Stockholders' Agent in connection with this transaction.

The Merger Agreement contemplates that, after the Effective Time, the necessary payments of the Merger Consideration will be made upon the surrender by a Company Securityholder of such Company Securityholders' Certificate(s). The Undersigned acknowledges that, until surrendered, each outstanding Certificate that formerly represented shares of the Company will be deemed from and after the Effective Time, for all corporate purposes, to evidence only the right to receive the applicable Merger Consideration in accordance with the terms hereof and of the Merger Agreement. The Undersigned will be required to return the original Certificate(s) (or if no longer in their possession, an Affidavit of Loss, in customary form) to the Payment Administrator in order to receive the Undersigned's portion of the Merger Consideration to the following address:

Acquiom Clearinghouse LLC
950 17th St., Suite
1400 Denver,
Colorado 80202 Attn:
Client Services

The Undersigned acknowledges that if unable to return such Certificate(s), the Undersigned shall contact the Payment Administrator at support@srsacquiom.com or 303.222.2080 with respect to receiving an Affidavit of Loss.

The Undersigned represents that the Undersigned has full authority to surrender its Securities, free and clear of all liens, claims and encumbrances. The Undersigned will, upon request, execute and deliver any additional documents reasonably deemed appropriate by Parent or the Payment Administrator in connection with the surrender of the Securities. The Undersigned acknowledges that the delivery will be effected, and the risk of loss and title to any such items will pass, only upon receipt thereof by the Payment Administrator. All authority conferred or agreed to be conferred in this Letter of Transmittal shall be binding upon the successors, assigns, heirs, executors, administrators and legal representatives of the Undersigned and shall not be affected by, and shall survive, the death or incapacity of the Undersigned. The surrender of Securities hereby is irrevocable.

The Undersigned understands that surrender is not made in acceptable form until the receipt by the Payment Administrator of this Letter of Transmittal duly completed with an original signature, and of the original Certificate(s), together with all accompanying evidence of authority in form satisfactory to Parent (which may delegate power in whole

or in part to the Payment Administrator). All questions as to validity, form and eligibility of any surrender of Securities hereby will be determined by Parent (which may delegate power in whole or in part to the Payment Administrator) and such determination shall be final and binding. The Undersigned acknowledges and agrees that the Merger Consideration paid in exchange for Securities shall be deemed to have been issued in full satisfaction of all rights pertaining to such Securities, as applicable.

In accordance with the Merger Agreement, except as otherwise provided below, the Certificates representing your former Securities listed on Form 3 are hereby surrendered to be exchanged for the Merger Consideration on the terms set forth in the Merger Agreement and this Letter of Transmittal. By signing and submitting this Letter of Transmittal, you also hereby represent, warrant, covenants and agree as follows:

(i) The Undersigned is the legal and beneficial owner of the Securities represented by the Certificate(s) set forth on Form 3 of this Letter of Transmittal, with good and valid title to, and full power and authority to sell, assign and transfer such Securities free and clear of all Liens, and not subject to any claims or other restrictions, except as set forth in any legends on the certificates representing such Securities.

(ii) The Undersigned has full legal capacity, power and authority to execute and deliver this Letter of Transmittal and to perform his, her or its obligations hereunder.

(iii) The execution and delivery of this Letter of Transmittal has been duly authorized by all necessary action (including, without limitation, if the Undersigned is a corporation, approval by its board of directors and, if necessary, shareholders, as the case may be, if the Undersigned is a partnership, approval by its general partner or limited partners, as the case may be, if the Undersigned is a limited liability company, approval by its manager, and if necessary, members, as the case may be) on the part of the Undersigned, if any, and this Letter of Transmittal constitutes a valid and binding obligation of the Undersigned, enforceable against him, her or it in accordance with its terms.

(iv) The Undersigned hereby waives any appraisal rights or dissenter's rights which the Undersigned might otherwise have in connection with the Undersigned's ownership of the Securities under applicable law in connection with the transactions contemplated by the Merger Agreement.

(v) The Undersigned understands that (i) unless and until the Undersigned submits a properly completed Letter of Transmittal according to the terms herein, no cash payments of Merger Consideration pursuant to the Merger Agreement shall be made to the Undersigned or its designee, (ii) payment is conditioned on the closing of the Merger, and (iii) no interest will accrue on any cash payment due.

(vi) Effective as of the completion and delivery of this Letter of Transmittal and receipt by the Undersigned of any applicable portion of the Estimated Closing Merger Consideration, the Undersigned, solely in his, her or its capacity as a holder of Securities of the Company and solely as it relates to matters in

connection therewith, hereby agrees to release, acquit and forever discharge, to the fullest extent permitted by applicable law, the Company and each of its past, present or future officers, managers, directors, and employees of, from and against any and all actions, causes of action, claims, demands, damages, judgments, debts, dues and suits of every kind, nature and description whatsoever which such Undersigned or its successors, assigns, heirs, executors, administrators or legal representatives ever had, now has or may have on or by reason of any matter, cause or thing whatsoever prior to the completion and delivery of this Letter of Transmittal in its capacity as a holder of Securities of the Company. Notwithstanding the foregoing, this release shall not be applicable to, and shall not affect, any rights of the Undersigned (i) arising out of, relating to or in connection with any obligation of the Company or the Stockholders' Agent to the Undersigned arising pursuant to any provision of the Merger Agreement or the Escrow Agreement, (ii) with respect to indemnification in favor of, or limitation of liability of, or reimbursement of expenses of, a current or former director or officer of the Company pursuant to the certificate of incorporation, bylaws or other equivalent governing document of the Company or any written indemnification agreements, including without limitation, Article IX of the Company's certificate of incorporation and Section 5.9 of the Merger Agreement, or (iii) to receive any salary or bonus accrued, or reimbursement of any ordinary course employee business expenses incurred, as of the Effective Time. The Undersigned expressly waives any

and all rights under Section 1542 of the Civil Code of the State of California (or any similar law, provision or statute of any other jurisdiction or authority) which states in full as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(vii) The Undersigned understands and agrees that (i) a portion of the Merger Consideration to which it may be entitled under the Merger Agreement will be held back and reserved for the Stockholders' Representative's Expense Fund pursuant to the terms of the Merger Agreement and (ii) the Undersigned shall only be entitled to a portion of such amount (if any) as and when such amount is payable in accordance with the provisions of the Merger Agreement.

(viii) The Undersigned understands and agrees that (i) a portion of the Merger Consideration to which it may be entitled under the Merger Agreement will be placed in escrow to be held pursuant to the terms of the Merger Agreement and the Escrow Agreement referred to in the Merger Agreement and (ii) the Undersigned shall only be entitled to a portion of such amount (if any) as and when such amount is payable in accordance with the provisions of the Merger Agreement and the Escrow Agreement referred to in the Merger Agreement, as applicable.

SRS ACQUIOM

(ix) The Undersigned understands and agrees that, contingent upon and effective immediately prior to the consummation of the Merger, to the extent the Undersigned is a party to: (i) the Second Amended and Restated Investor Rights Agreement, dated August 20, 2013 or (ii) the Voting Agreement, dated August 20, 2013 (collectively, the "Terminated Agreements"), the Undersigned consents and agrees to the waiver of any applicable advance notice requirements contained in such Terminated Agreement, the termination of such Terminated Agreements, provided, however, that Sections 5 and 6 of the Second Amended and Restated Investors Rights Agreement shall survive and remain in full force and effect after the consummation of the Merger, and agrees that any rights and obligations the Undersigned may have under such Terminated Agreements shall terminate upon the termination of each of the Terminated Agreements.

(x) This Letter of Transmittal will be governed by and construed in accordance with the internal laws of the State of Delaware without reference to its choice-of-law rules.

The Undersigned is strongly urged to consult with legal, tax and/or financial advisor(s) of the Undersigned's choosing regarding the consequences to the undersigned of the Merger, the Merger Agreement, and the Undersigned's execution of this Letter of Transmittal, and acknowledges that the Undersigned (a) availed himself, herself or itself of such right and opportunity (to the extent that the Undersigned so desired); (b) has carefully reviewed and understands the terms of the foregoing documents and the transactions contemplated thereby and deems them to be in the Undersigned's best interest; and (c) is competent to execute this Letter of Transmittal free from coercion, duress or undue influence.

CONFIDENTIAL

SPH - 047167000018 - 384752 v5

SRSACOUIOM

LETTER OF TRANSMITTAL SUMMARY

Before returning this LOT, please confirm the following steps are complete by checking the boxes below.

1

Registered Holder Information
Provide contact information for the Registered Holder of the Securities you are exchanging for payment. A separate LOT is required for each unique Registered Holder name. You may duplicate this LOT as needed.

❑ 2

Taxpayer Identification Number and Certification
Confirm your Taxpayer Identification Number and certify your IRS status.

o 3

Securities
List the Securities you are exchanging for payment.

4

Payment Method
Select how you would like to receive your payment.

5

Payment Instructions
Provide information for your chosen payment method.

EI 6

Medallion Guarantee
Complete this form if you would like payment to be made to someone other than the Registered llolder

o

Return Your Completed and Signed LOT to:

SRS Acquiom Clearinghouse LLC
1614 15th St., Suite 210
Denver, CO 80202

We recommend that von send this LOT using a traceable delivery method.

For assistance, please contact our Client Services team via telephone at (303) 222-2080 or via email at supportrdsrsacquiom.com.

Registered Holder Information

FORM 1

A separate Letter of Transmittal is required for each unique Registered Holder.

Name of Registered Holder exactly as it appears for each Security listed on Form 3:

ri Check this box if you would like payment to be remitted to another name. You must also complete Form 2 (W-9) with tax information for the new payee and complete Form 6.

Al) Mail To The Attention Of:

A2) Address 1:

A3) Address 2:

A4) City:

as) State/Province/Region:

A7) Country:

A6) Postal Code:

A9) Telephone Number:

A5) Email Address:

By providing your email address, you agree and consent to receive electronically all communications, agreements, documents, notices and disclosures (collectively, "Communications") that we provide in connection with your use of this service. Communications include: (i) this agreement and our Privacy Policy and any amendments, modifications or supplements to them; (ii) your records of transactions through this service; (iii) any initial, periodic or other disclosures or notices provided in connection with this service, including without limitation

those required by federal or state law, including tax forms; (iv) any customer service communications, including without limitation communications with respect to claims of error or unauthorized use of this service; and (v) any other communication related to this service or the Payment Administrator. You may withdraw your consent to receive Communications electronically, or you may request a paper copy of a Communication, by contacting us via the "Contact Us" link on our website.

In order to access and retain Communications, you must have: (i) an Internet browser that supports an appropriate level of encryption, (ii) an email account and the capability to read email from us, and (iii) a device and Internet connection capable of supporting the foregoing. You can update your email address at any time by contacting us via the "Contact Us" link on our website or contacting our Client Services as provided herein.

L

Taxpayer Identification Number and Certification

FORM 2

IRS Form W-9

U.S. Residents and Entities

PLEASE COMPLETE THE ATTACHED IRS FORM W-9

Notice to Non-Resident Alien Individuals or Foreign Entities

(e.g., foreign corporation, partnership or trust)

DO NOT COMPLETE THE ATTACHED FORM W-9. INSTEAD, LUMPLETE AND HE I k)IN THE PROPER FORM W-8 CERTIFICATION OF FOREIGN STATUS, AVAILABLE AT: http://www.irs.gov/uac/Form-W-8,-Certificate-of-Foreign-Status

FAILURE TO COMPLETE AND RETURN A PROPER FORM W-8 WILL SUBJECT YOU TO FEDERAL BACKUP WITHHOLDING AT THE CURRENT nnnl r RATE.

If you need an Employer Identification Number, please visit:

www.irs.gov/businesses and click on Employer Identification Number (EIN) under Starting a Business.

For specific information on filling out this Substitute Form W-9, please visit the IRS website: www.irs.gov/pub/irs-pdf/fw9.pdf

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only **one** of the following seven boxes:

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____

Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number

___ – ___ – ____

or

Employer identification number

__ – _____

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here **Signature of U.S. person** ▶ **Date** ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note. ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

Limited Liability Company (LLC). If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over $600 required to be reported and direct sales over $5,000[1]	Generally, exempt payees 1 through 5[2]
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note. You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: *A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.*

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account[1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor[2]
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee[1] The actual owner[1]
5. Sole proprietorship or disregarded entity owned by an individual	The owner[3]
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	**Give name and EIN of:**
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity[4]
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov*. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: *spam@uce.gov* or contact them at *www.ftc.gov/idtheft* or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

Securities

securities you are exchanging for payment.

FORM 3

srli Security Type:	Security Number:	sHli Quantity of Shares:
ST2) Security Type:	5N2) Security Number:	5142) Quantity of Shares:
sTo Security Type:	*clvt,)* Security Number:	9-441 Quantity of Shares:
sr3) Security Type:		sH3) Quantity of Shares:
515) Security Type:	v,5) Security Number:	945) Quantity of Shares:
ST62 Security Type:	9,6i Security Number:	sH6) Quantity of Shares:

The Undersigned affirms acknowledges and agrees (A) that each Security listed on Form 3 (to the extent certificated) was not endorsed and that the Shares represented by each Security have not, in whole or part, been assigned, transferred, hypothecated, pledged or otherwise disposed of in any manner whatsoever, and that no person or entity other than the Undersigned has any right, title, claim, or interest in the same, and **(B)** that the Undersigned will indemnify, defend and hold harmless the Payment Administrator and the parties to the definitive transaction agreement, together with their respective employees, officers, directors, agents, successors and assigns, from and against any and all losses, liabilities, damages, judgments, costs, charges, expenses (including the fees and expenses of counsel), claims, actions and suits, arising out of or in connection with the Securities listed on Form 3 or the delivery of this Letter of Transmittal.

Payment Method

Select how you would like to recieve your payment.

FORM 4

Direct Deposit (ACH) Election (Complete Form 5A)

You wish to receive payments via direct deposit (ACH). **You understand that this option is only available to certain accounts** at U.S. financial **institutions** and have confirmed that your financial institution accepts direct deposit (ACH) payments to your account and have verified the information provided on Form 5A with you financial institution. You hereby authorize payments to be made hereunder as direct deposit (ACH) payments. In the event of a duplicate payment, overpayment, fraudulent payment, or payment made in error, you hereby authorize the reversal of such erroneous payment in accordance with the rules of the National Automated Clearinghouse Association. Please note that instructions for ACH and wire often vary (e.g., direct deposit (ACH) transactions cannot include "for further credit account number" or "for further credit account name").

ri **Direct** Deposit (ACH) payment method (no charge)

Wire Transfer Election (Complete Form 5B)

You wish to receive payments via wire transfer. A fee of $25 will be charged for each payment made to a U.S. domestic financial institution. A fee of $50 will be charged for all wire transfers to accounts domiciled outside the United States. You understand that if either such fee applies, it will be deducted from your payment. In the event of a duplicate payment, overpayment, fraudulent payment, or payment made in error, you hereby authorize the reversal of such erroneous payment through a single ACH electronic debit in the amount of such erroneous payment from the bank account provided on Form 5B.

EI Wire Transfer payment method (fees apply)

Check (Complete Form 5C)

You wish to receive payments in the form of a check, which will be sent to you via U.S. mail at the address provided in Form 1 (unless indicated otherwise in Form 5C). You understand that a fee of $20 will be charged for each such payment paid by domestic check, and a fee of $25 for each international check. The check payment fee will be deducted from your payment. If you are electing to receive payment via check and you would like the check payable in accordance with information provided in Form 1 you may skip Form 5C and Form 6.

Check, default payment method (fees apply)

By completion of the payment details on Form 5A, Form 5B or Form 5C and/or by executing this Letter of Transmittal the Undersigned hereby agrees that such payment instructions (or, if applicable, the address on Form 1) are true and that the Undersigned is representing that it is authorized to act on behalf of account designated on Form 5A or 5B, if applicable, and is hereby directing the Payment Administrator to cause

payments to be made to the account listed (or. if payment is being made by check to the address specified herein). Further, the Payment Administrator shall have no liability to the Undersigned for any damages whatsoever that such person may incur as a result of the Payment Administrator following the instructions provided herein.

Payment Instructions: Direct Deposit (ACH) Information

FORM 5A

Complete Form 5A if you selected Direct Deposit (ACH) as your payment method on Form 4.

If the **Name(s) on the Bank Account** listed below is different than the Registered Holder, a Medallion Guarantee must be completed (Form 6) before any payment can be issued.

Please confirm your direct deposit (ACH) instructions with your bank. If payment is returned, you may incur additional fees. Please note that direct deposit (ACH) transactions are typically credited to your account within one business day, but may not be visible in your account for an additional 1-2 business days.

*** Indicates required field**

Name of Registered Holder exactly how it appears listed for each Security on Form 3:*

En Name(s) on Bank Account: •

E2) Bank Account Number: '

[3i ABA Routing Number: •

E4) Account Type (Check **one**): '

ES) Bank **Name:** '

CONSUMER

111 Checking n saving,s ❑ Checking Savings

IMPORTANT NOTE: Please note that the ABA Routing Number for wire transfers and direct deposit (ACH) may be different from eachother. Please confirm this information with your financial institution. If your account is with a non-bank financial institution such as a brokerage or mutual fund, please contact the financial institution to confirm that wire transfer or direct deposit (ACH) payment is possible for your account and to obtain the correct payment information for this form. Please note that direct deposit (ACH) may not be available for payments to accounts at non-bank financial institutions. Failure to provide accurate and complete electronic payment instructions may cause delays in processing or payments to be returned. If no electronic payment instructions are provided, payments will be automatically disbursed by check to the address provided in Form 1 or Form SC of this document. Subsequent payments will be made using the same method as the initial payment, at the discretion of the Payment Administrator. Please note that your financial institution may charge a fee for processing incoming wire transfers or direct deposit (ACH). Any such fees would be in addition to the fees described herein.

Payment Instructions: Wire Transfer Information

FORM 5B

Complete Form 5B if you selected Wire Transfer as your payment method on Form 4.

If the Name(s) on the Account listed below is different than the Registered Holder, a Medallion Guarantee must be completed (Form 6) before any payment can be issued.

If payment is returned, you may incur additional fees. Please confirm your wire instructions with your financial institution. * Indicates required field

Name of Registered Holder exactly how it appears listed for each Security on Form 3:'

Name(s) on Account:

E21 U.S. Bank Account Number OR

E31 U.S. Bank Routing Number OR

Non-U.S. IBAN Number: "

Non-U.S. SWIFT Number:

F4) Financial Institution Name:

151 Financial Institution Address: "

EC Financial Institution City: "

E71 Financial Institution State/Province: '

F61 Financial Institution Postal Code: '

E9) Financial Institution Country: '

(10/ Financial Institution Contact Name: '

EII) Financial Institution Contact Phone Number:"

112) For Further Credit Account Number (If applicable):

F13) For Further Credit Account Name (If applicable):

IMPORTANT NOTE: Please note that the ABA Routing Number for wire transfers and direct deposit (ACH) may be different from eachother. Please confirm this information with your financial institution. If your account is with a non-bank financial institution such as a brokerage or mutual fund, please contact the financial institution to confirm that wire transfer or direct deposit (ACH) payment is possible for your account

and to obtain the correct payment information for this form. Please note that direct deposit (ACH) may not be available for payments to accounts at non-bank financial institutions. Failure to provide accurate and complete electronic payment instructions may cause delays in processing or payments to be returned. If no electronic payment instructions are provided, payments will be automatically disbursed by check to the address provided in Form 1 or Form 5C of this document. Subsequent payments will be made using the same method as the initial payment, at the discretion of the Payment Administrator. Please note that your financial institution may charge a fee for processing incoming wire transfers or direct deposit (ACH). Any such fees would be in addition to the fees described herein.

Payment Instructions : Check Payment Information

FORM 5C

Complete Form 5C ONLY if: (A) the check is being paid to someone other than the name(s) provided in Form or (B) you would like your check to be mailed to an address that is different than the one provided in Form 1.

If the **Name(s) on "Make Check Payable To"** listed below are different than the Registered Holder, a Medallion Guarantee must be completed (Form 6) before any payment can be issued.

- Indicates required field

Name of Registered Holder exactly how it appears listed for each Security on Form 3:•

(11 Make Check Payable To:
(2) Mail To The Attention Of:

(3) Address 1:

4) Address 2:

(5) City:

(6) State/Province:

(7) Postal Code:

(8) Country:

CONFIDENTIAL

Medallion Guarantee

'You have requested that you would like payment to be made to someone other than the Registered Holder(s) listed on Form 1.

If you have requested that the payment for the Security listed in Form 3 be made to any payee other than the Registered Holder(s) in Form 1, and you've completed Form 5A, Form 5B, or Form 5C with payment information for that payee, you must also complete this form in order to receive payment.

You can obtain the required Medallion Signature Guarantee from an eligible Guarantor Institution (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) with membership in an approved Signature Guarantee Medallion Program, pursuant to Securities and Exchange Commission Rule 17Ad-15. You may wish to contact your primary bank as most banks provide this service to its customers.

MI) Signature of Registered Holder or Authorized Signer:

M2) Date:

1.13, Name (Printed):

?..4) Title (If signing on behalf of entity):

Date:

Additional Signature (If applicable):

.17) Name (Printed):

1618: Title (If signing on behalf of entity):

Medallion Guarantee Stamp

Guarantor Institution:

Guarantor Contact:

Guarantor Phone:

Signature Page to Letter of Transmittal

Signature is required for each Registered Holder

By entering in my name and email **address then clicking submit. I represent that I am the authorized signer or I have authority to apply the signature of the authorized signer. with the intention of providing an electronic signature that is binding on the registered holder and to be given the same legal effect as a manual signature. and such electronic signature is provided on behalf of all owners for joint accounts. By e-Signing. you acknowledge that you have read and understand this entire Letter of Transmittal and agree to all of its terms. Please carefully read this entire Letter of Transmittal, which includes the accompanying forms and instructions.**

Si) s2) Date:

For Office Use Only For Office Use Only

S3) Name (Printed):

ssi Additional Signature (If applicable): sf,, Date:

x

For Office Use Only For Office Use Only

s7) Name (Printed): se) Title (If signing on behalf of entity):

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Any modifications or additions to this Letter of Transmittal unilaterally made by the Undersigned (other than to the extent providing the information expressly solicited hereby) shall be deemed ineffective unless expressly approved and agreed to in writing by buyer. Receipt of payment does not constitute approval or acceptance of any such modifications or additions.

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SRSACQUIOM

LETTER OF TRANSMITTAL SUMMARY

Before returning this LOT, please confirm the following steps are complete by checking the boxes below.

1

Registered Holder Information
Provide contact information for the Registered Holder of the Securities you are exchanging for payment. A separate LOT is required for each unique Registered Holder name. You may duplicate this LOT as needed.

❑ 2

Taxpayer Identification Number and Certification
Confirm your Taxpayer Identification Number and certify your IRS status.

3

Securities
List the Securities you are exchanging for payment.

4

Payment Method
Select how you would like to receive your payment.

5

Payment Instructions
Provide information for your chosen payment method.

6

Medallion Guarantee
Complete this form if you would like payment to be made to someone other than the Registered holder.

○ 7

Return Your Completed and Signed LOT to:

SRS Acquiom Clearinghouse LLC
1614 15th St., Suite 210
Denver, CO 80202

We recommend that you send this LOT using a traceable delivery method.

For assistance, please contact our Client Services team via telephone at (303) 222-2080 or via email at supportra)srsacquiom.com.

Exhibit H

Form of Option Surrender Agreement

[*See attached*]

ICON BIOSCIENCE, INC.
[FORM OF] OPTION SURRENDER AGREEMENT

CONFIDENTIAL

[First Name]
[Last Name]
[Address]

[Date]

Dear Optionholder,

As you may know, Icon Bioscience, Inc., a Delaware corporation (the "Company"), intends to enter into an Agreement and Plan of Merger (the "Merger Agreement"), by and among pSivida Corp., a Delaware corporation ("Parent"), Oculus Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), the Company, and Shareholder Representative Services LLC, a Colorado limited liability company (the "Stockholders' Agent"), solely in its capacity as the representative of the Company Securityholders (as defined in the Merger Agreement). Pursuant to the Merger Agreement, at the Effective Time (as defined in the Merger Agreement), Merger Sub will be merged with and into the Company (the "Merger"), the separate corporate existence of Merger Sub will cease, and the Company, as the surviving corporation to the Merger, will continue as a wholly-owned subsidiary of Parent.

By signing this option surrender agreement (this "Agreement"), you acknowledge and agree to the treatment of your option(s) (each, an "Option") to purchase shares of the Company's common stock, par value $0.00001 per share ("Company Shares"), in connection with the Merger, as described below. A list of the Options previously granted to you by the Company is set forth on Exhibit A. **By signing this Agreement, you acknowledge and agree that the information on Exhibit A is complete and accurate.**

This Agreement will become effective as of the Effective Time. If the Merger Agreement is validly terminated in accordance with its terms, this Agreement will automatically terminate.

In order to properly effect this Option Surrender Agreement, you must sign and return a complete copy to Acquiom Financial LLC, the payment administrator (the "Paying Agent"), either by email at support@srsacquiom.com or by mail at the following address: Acquiom Clearinghouse LLC, 950 17th St., Suite 1400, Denver, Colorado 80202, Attn: Client Services. Should you have any questions regarding the return of your signed copy of this Agreement, you may contact the Paying Agent at support@srsacquiom.com or 303.222.2080.

Treatment of Options in Merger. If you sign and return this Agreement to the Paying Agent in accordance with the preceding paragraph at or prior to the Effective Time, then each of your Options (or portion thereof) that is outstanding as of immediately prior to the Effective Time will be cancelled, terminated and extinguished as of the Effective Time, and converted into the right to receive following the Effective Time an amount of Merger Consideration in accordance with the Payout Schedule (as each such term is defined in the Merger Agreement),

when and if payment of Merger Consideration, if any, is required to be paid pursuant to the Merger Agreement. If you do not sign and return this Agreement to the Paying Agent at or prior to the Effective Time, then each of your Options (or portion thereof) that is outstanding as of immediately prior to the Effective Time will remain outstanding after the Effective Time and will continue to be governed by the same terms and conditions as apply to your Options immediately prior to the Effective Time.

Pursuant to the Merger Agreement, in order to have your Options cancelled in connection with the Merger and converted into the right to receive a portion of the Merger Consideration, if any, that is required to be paid pursuant to the Merger Agreement, as determined in accordance with the Payout Schedule, you must execute and deliver a copy of this Agreement to the Paying Agent at or prior to the Effective Time. No other action is required (that is, you do not need to exercise your Options or pay the exercise price associated with your Options, as the aggregate amount of the exercise price of your Options has already been taken into account in determining the amount payable to you, if any, pursuant to the Merger Agreement and the Payout Schedule).

Release and Acknowledgments. In order to induce Parent to consummate the Merger and in consideration for the payments and benefits described in this Agreement, effective as of the Effective Time, you hereby irrevocably, unconditionally and completely release, acquit and forever discharge the Company, Parent and their affiliates, subsidiaries, successors and past, present and future assigns, directors, officers, employees, agents, attorneys and representatives ("Releasees") of and from any and all claims, liabilities, actions, disputes, controversies, demands, rights, obligations and causes of action of every kind and nature whatsoever (each, a "Claim"), known or unknown, suspected or unsuspected, existing or prospective, that you have ever had, now have or can, shall or may hereafter have, arising out of or in any way relating to your Options, the Company's 2007 Stock Incentive Plan, as amended, your stock option agreement(s), or this Agreement, and, effective as of the Effective Time, hereby disclaim, waive and relinquish all rights, title and interest you may have in your Options or Company Shares underlying such Options, other than your right to receive the consideration described above, in each case, pursuant to the terms and conditions of the Merger Agreement. Notwithstanding the foregoing, this release shall not be applicable to, and shall not affect, any rights of the undersigned (i) arising out of, relating to or in connection with any obligation of the Company or the Stockholders' Agent to the undersigned arising pursuant to any provision of the Merger Agreement or the Escrow Agreement, (ii) with respect to indemnification in favor of, or limitation of liability of, or reimbursement of expenses of, a current or former director or officer of the Company pursuant to the certificate of incorporation, bylaws or other equivalent governing document of the Company or any written indemnification agreements, including without limitation, Article IX of the Company's certificate of incorporation and Section 5.9 of the Merger Agreement, or (iii) to receive any salary or bonus accrued, or reimbursement of any ordinary course employee business expenses incurred, as of the Effective Time. The undersigned expressly waives any and all rights under Section 1542 of the Civil Code of the State of California (or any similar law, provision or statute of any other jurisdiction or authority) which states in full as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

You hereby waive the benefits of, and any rights that you may have under, any statute, common law or other law regarding the release of unknown claims in any jurisdiction that arise from any event, matter, cause, thing, act, omission or conduct occurring or existing at any time up to and including the date of this Agreement.

You also agree that you will not assert or attempt to assert any Claim of the type described in, and not otherwise excluded by the terms of, this Agreement against any Releasee at any time after the execution and delivery of this Agreement.

In addition, you hereby acknowledge and agree to be bound by, and to observe and comply with, the provisions of the Merger Agreement applicable to Company Securityholders, including Section 2.12(a) (Company Options) and Article IX, as if you were party thereto. You also agree to hold the terms of the Merger Agreement in strict confidence. Notwithstanding anything herein to the contrary, if the terms of this Agreement conflict in any way with the provisions of the Merger Agreement, then the provisions of the Merger Agreement will control.

You also acknowledge the appointment of Shareholder Representative Services LLC, as the representative, attorney-in-fact and exclusive agent for and on behalf of the Company Securityholders to act as the Stockholders' Agent in all respects as contemplated by the Merger Agreement, including Section 9.4 of the Merger Agreement, and acknowledge and agree to the exculpation and indemnification provisions in favor of the Stockholders' Agent set forth in the Merger Agreement. Without limiting the foregoing, the undersigned agrees that the information contained in this Agreement may be shared with Parent and the Stockholders' Agent in connection with this transaction.

By executing and delivering this Agreement, you further acknowledge, agree, represent and warrant to the Company and Parent that: (a) you are the owner, beneficially and of record, of your Options, free and clear of all liens; (b) you have not sold, transferred, conveyed, pledged or hypothecated any interest in your Options; (c) you have duly authorized the execution, delivery and performance of this Agreement; and (d) this Agreement constitutes the legal, valid and binding obligation of you, enforceable in accordance with its terms (except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally and rules of law governing specific performance, injunctive relief and other equitable remedies). If you are married and your Options constitute community property or if spousal or other approval is required for this Agreement to be legal, valid and binding, you acknowledge, agree, represent and warrant that this Agreement has been duly authorized, executed and delivered by, and constitutes a valid and binding agreement of, your spouse, enforceable against your spouse in accordance with its terms (except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally and rules of law governing specific performance, injunctive relief and other equitable remedies).

You hereby declare that you have had the opportunity to obtain independent legal advice with respect to the matters addressed herein and hereby voluntarily accept the terms of this letteragreement for the purpose of making full and final compromise, adjustment and settlement of all claims as aforesaid.

Please note that any descriptions contained in this Agreement regarding the payments to be received are provided solely for general information purposes and do not constitute tax advice. **Please consult your own tax advisor as to the specific tax implications of your Options to you, including, without limitation, the applicability and effect of federal, state, local and foreign tax laws.**

WHAT YOU NEED TO DO

We ask that you please complete and sign this Agreement and return it to the Paying Agent to acknowledge the treatment of your Options in connection with the Merger as soon as possible, but in no event later than March [•], 2018. [We ask that you also please complete the W-9 attached hereto as Exhibit B and return it to the Paying Agent together with the signed Agreement.] **The signed Agreement [and completed W-9] should be scanned and e-mailed to [NAME], [TITLE] at [E-MAIL][1].**

We would like to thank you for your efforts and support in helping to build a successful company. If you have any questions regarding this Agreement, please contact David Tierney of the Company at davidtierney@iconbioscience.com or (609) 235-5698.

[Signature Page Follows]

1 Note to Draft: To be conformed to the above.

Very truly yours,

ICON BIOSCIENCE, INC.

By: [Name]
Title: [Title]

AGREED AND ACCEPTED:

Signature

Print Name

Date

Address

Attachment

Exhibit A – Option Report

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EXHIBIT A

OPTION REPORT

Options Outstanding	Grant Date	Exercise Price	# of Shares Vested	# of Shares Unvested

EXHIBIT B

Form W-9

Exhibit I

Form of Warrant Surrender Agreement

[*See attached*]

ICON BIOSCIENCE, INC.
WARRANT SURRENDER AGREEMENT

CONFIDENTIAL

[First Name]
[Last Name]
[Address]

[Date]

Dear Warrantholder,

As you may know, Icon Bioscience, Inc., a Delaware corporation (the "Company"), intends to enter into an Agreement and Plan of Merger (the "Merger Agreement"), by and among pSivida Corp., a Delaware corporation ("Parent"), Oculus Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), the Company, and Shareholder Representative Services LLC, a Colorado limited liability company (the "Stockholders' Agent"), solely in its capacity as the representative of the Company Securityholders (as defined in the Merger Agreement). Pursuant to the Merger Agreement, at the Effective Time (as defined in the Merger Agreement), Merger Sub will be merged with and into the Company (the "Merger"), the separate corporate existence of Merger Sub will cease, and the Company, as the surviving corporation to the Merger, will continue as a wholly-owned subsidiary of Parent in such merger (the "Merger").

By signing this warrant surrender agreement (this "Agreement"), you acknowledge and agree to the treatment of your warrant(s) (each, a "Warrant") to purchase shares of the Company's common stock, par value $0.00001 per share ("Company Shares"), in connection with the Merger, as described below. A list of the Warrants previously issued to you by the Company is set forth on Exhibit A. **By signing this Agreement, you acknowledge and agree that the information on Exhibit A is complete and accurate.**

This Agreement will become effective as of the Effective Time. If the Merger Agreement is validly terminated in accordance with its terms, this Agreement will automatically terminate.

In order to properly effect this Warrant Surrender Agreement, you must sign and return a complete copy to Acquiom Financial LLC, the payment administrator (the "Payments Administrator"), either by email at support@srsacquiom.com or by mail at the following address: Acquiom Clearinghouse LLC, 950 17th St., Suite 1400, Denver, Colorado 80202, Attn: Client Services. Should you have any questions regarding the return of your signed copy of this Agreement, you may contact the Payments Administrator at support@srsacquiom.com or 303.222.2080.

Treatment of Warrants in Merger. If you sign and return this Agreement to the Payments Administrator in accordance with the preceding paragraph at or prior to the Effective Time, then each of your Warrants (or portion thereof) that is outstanding as of immediately prior to the Effective Time will be cancelled, terminated and extinguished as of the Effective Time,

and converted into the right to receive following the Effective Time an amount of Merger Consideration in accordance with the Payout Schedule (as each such term is defined in the Merger Agreement), when and if payment of Merger Consideration, if any, is required to be paid pursuant to the Merger Agreement. If you do not sign and return this Agreement to the Payments Administrator at or prior to the Effective Time, then each of your Warrants (or portion thereof) that is outstanding as of immediately prior to the Effective Time will remain outstanding after the Effective Time and will continue to be governed by the same terms and conditions as apply to your Warrants immediately prior to the Effective Time.

Pursuant to the Merger Agreement, in order to have your Warrants cancelled in connection with the Merger and converted into the right to receive a portion of the Merger Consideration, if any, that is required to be paid pursuant to the Merger Agreement, as determined in accordance with the Payout Schedule, you must execute and deliver a copy of this Agreement to the Payments Administrator at or prior to the Effective Time. No other action is required (that is, you do not need to exercise your Warrants or pay the exercise price associated with your Warrants, as the aggregate amount of the exercise price of your Warrants has already been taken into account in determining the amount payable to you, if any, pursuant to the Merger Agreement and the Payout Schedule).

Release and Acknowledgments. In order to induce Parent to consummate the Merger and in consideration for the payments and benefits described in this Agreement, effective as of the Effective Time, you hereby irrevocably, unconditionally and completely release, acquit and forever discharge the Company, Parent and their affiliates, subsidiaries, successors and past, present and future assigns, directors, officers, employees, agents, attorneys and representatives ("Releasees") of and from any and all claims, liabilities, actions, disputes, controversies, demands, rights, obligations and causes of action of every kind and nature whatsoever (each, a "Claim"), known or unknown, suspected or unsuspected, existing or prospective, that you have ever had, now have or can, shall or may hereafter have, arising out of or in any way relating to your Warrants or this Agreement, and, effective as of the Effective Time, hereby disclaim, waive and relinquish all rights, title and interest you may have in your Warrants or Company Shares underlying such Warrants, other than your right to receive the consideration described above, in each case, pursuant to the terms and conditions of the Merger Agreement. Notwithstanding the foregoing, this release shall not be applicable to, and shall not affect, any rights of the undersigned (i) arising out of, relating to or in connection with any obligation of the Company or the Stockholders' Agent to the undersigned arising pursuant to any provision of the Merger Agreement or the Escrow Agreement, (ii) with respect to indemnification in favor of, or limitation of liability of, or reimbursement of expenses of, a current or former director or officer of the Company pursuant to the certificate of incorporation, bylaws or other equivalent governing document of the Company or any written indemnification agreements, including without limitation, Article IX of the Company's certificate of incorporation and Section 5.9 of the Merger Agreement, or (iii) to receive any salary or bonus accrued, or reimbursement of any ordinary course employee business expenses incurred, as of the Effective Time. The undersigned expressly waives any and all rights under Section 1542 of the Civil Code of the State of California (or any similar law, provision or statute of any other jurisdiction or authority) which states in full as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

To the extent that any provision of any of the Warrants requires the Company to provide any advance notice to you of the execution and delivery of the Merger Agreement and/or the consummation of the Merger or the other transactions contemplated by the Merger Agreement, or to use any efforts to cause Parent to assume, substitute any securities for, or pay any consideration in respect of, any of the Warrants, you hereby waive any and all such requirements applicable to the execution and delivery of the Merger Agreement and/or the consummation of the Merger or the other transactions contemplated by the Merger Agreement.

You hereby waive the benefits of, and any rights that you may have under, any statute, common law or other law regarding the release of unknown claims in any jurisdiction that arise from any event, matter, cause, thing, act, omission or conduct occurring or existing at any time up to and including the date of this Agreement.

You also agree that you will not assert or attempt to assert any Claim of the type described in, and not otherwise excluded by the terms of, this Agreement against any Releasee at any time after the execution and delivery of this Agreement.

In addition, you hereby acknowledge and agree to be bound by, and to observe and comply with, the provisions of the Merger Agreement applicable to Company Securityholders, including Section 2.12(b) (Warrants) and Article IX, as if you were party thereto. You also agree to hold the terms of the Merger Agreement in strict confidence. Notwithstanding anything herein to the contrary, if the terms of this Agreement conflict in any way with the provisions of the Merger Agreement, then the provisions of the Merger Agreement will control.

You also acknowledge the appointment of Shareholder Representative Services LLC, as the representative, attorney-in-fact and exclusive agent for and on behalf of the Company Securityholders to act as the Stockholders' Agent in all respects as contemplated by the Merger Agreement, including Section 9.4 of the Merger Agreement, and acknowledge and agree to the exculpation and indemnification provisions in favor of the Stockholders' Agent set forth in the Merger Agreement. Without limiting the foregoing, the undersigned agrees that the information contained in this Agreement may be shared with Parent and the Stockholders' Agent in connection with this transaction.

By executing and delivering this Agreement, you further acknowledge, agree, represent and warrant to the Company and Parent that: (a) you are the owner, beneficially and of record, of your Warrants, free and clear of all liens; (b) you have not sold, transferred, conveyed, pledged or hypothecated any interest in your Warrants; (c) you have duly authorized the execution, delivery and performance of this Agreement; and (d) this Agreement constitutes the legal, valid and binding obligation of you, enforceable in accordance with its terms (except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally and rules of law governing specific performance, injunctive relief and other equitable remedies). If you are married and your Warrants constitute community property or if spousal or other approval is required for this Agreement to be legal, valid and binding, you acknowledge, agree, represent and warrant that this Agreement has been duly authorized, executed and delivered by, and constitutes a valid and binding agreement of, your spouse, enforceable against your spouse in accordance with its terms (except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally and rules of law governing specific performance, injunctive relief and other equitable remedies).

You hereby declare that you have had the opportunity to obtain independent legal advice with respect to the matters addressed herein and hereby voluntarily accept the terms of this letter agreement for the purpose of making full and final compromise, adjustment and settlement of all claims as aforesaid.

Please note that any descriptions contained in this Agreement regarding the payments to be received are provided solely for general information purposes and do not constitute tax advice. **Please consult your own tax advisor as to the specific tax implications of your Warrants to you, including, without limitation, the applicability and effect of federal, state, local and foreign tax laws.**

WHAT YOU NEED TO DO

We ask that you please complete and sign this Agreement and return it to the Paying Agent to acknowledge the treatment of your Warrants in connection with the Merger as soon as possible, but in no event later than March 27, 2018. **The signed Agreement should be submitted electronically, or scanned and e-mailed to Acquiom Financial LLC at Support@srsacquiom.com.**

We would like to thank you for your efforts and support in helping to build a successful company. If you have any questions regarding this Agreement, please contact David Tierney of the Company at davidtierney@iconbioscience.com or (609) 235-5698.

[Signature Page Follows]

Very truly yours,

ICON BIOSCIENCE, INC.

By: [Name]
Title: [Title]

AGREED AND ACCEPTED:

Signature _____ Address _____

Print Name _____

Date _____

Attachment

Exhibit A – Warrant Report

[Remainder of Page Left Intentionally Blank.]

EXHIBIT A

WARRANT REPORT

Issue Date	Exercise Price	# of Shares Underlying Warrant

pSivida Corp. Announces Transformative Acquisition of Icon Bioscience Inc. and Growth Capital Financing with Essex Woodlands Healthcare Partners – Company Will Rebrand as EyePoint Pharmaceuticals, Inc.

Acquisition and additional funding significantly accelerate the company's transformation to a specialty biopharmaceutical company with the potential to commercialize two ophthalmic products in 1H 2019

Icon Bioscience's DEXYCU™ (dexamethasone intraocular suspension) 9% was approved by the FDA on February 9, 2018, and is the first long acting intraocular product approved for the treatment of postoperative inflammation

Essex Woodlands (EW) Healthcare Partners, an established growth equity firm, and a third party investor will make an equity investment in pSivida for a total of up to approximately $60.5 million

SWK Holdings will provide up to $20 million in debt financing

pSivida Corp. will rebrand and change its name to EyePoint Pharmaceuticals Inc. (NASDAQ: EYPT) effective April 2, 2018

Conference Call and Webcast Tomorrow, March 29, 2018, at 8:00 a.m. ET

WATERTOWN, Mass., March 28, 2018 — pSivida Corp. (NASDAQ: PSDV) (ASX: PVA), a specialty biopharmaceutical company committed to developing and commercializing innovative ophthalmic products, today announced the acquisition of Icon Bioscience Inc. (Icon). Icon is a specialty biopharmaceutical company whose lead product DEXYCU (dexamethasone intraocular suspension) 9% is FDA approved for postoperative inflammation and is administered as a single dose at the end of ocular surgery. DEXYCU is the first long-acting intraocular product approved by the FDA for the treatment of postoperative inflammation. DEXYCU utilizes Icon's proprietary Verisome® drug-delivery platform which allows for a single injection that releases over time.

The Company has entered into a financial agreement with EW Healthcare Partners. EW Healthcare Partners and a third party investor will make equity investments in pSivida for a total of up to approximately $60.5 million. In addition, SWK Holdings Corporation (SWK) has agreed to provide pSivida with up to $20 million in a debt facility. The Company will use these resources to finance the Icon acquisition and prepare for the commercial launches of DEXYCU and, if approved by FDA, Durasert™ micro-insert for the treatment of non-infectious uveitis affecting the posterior segment of the eye.

Two Potential Near-Term Launches

- On February 9, 2018, the FDA approved Icon Bioscience's New Drug Application (NDA) for DEXYCU, a dropless, long-acting therapeutic for the treatment of postoperative inflammation. There are over four million cataract surgeries performed annually in the U.S. pSivida plans to launch DEXYCU in the U.S. in the first half of 2019 following the successful scale up of commercial supplies.
- On March 19, 2018, the FDA accepted pSivida's NDA for Durasert micro-insert for treatment of non-infectious posterior segment uveitis, which will be subject to a standard review and has a Prescription Drug User Fee Act (PDUFA) action date of November 5, 2018. Posterior segment uveitis is a high unmet need area with limited treatment options and the third leading cause of blindness in the U.S. If approved, pSivida expects to launch Durasert in the U.S. in the first half of 2019.

Strategic Rationale for Transactions

This transformative acquisition and financing are driven by the shared vision held by pSivida and its new partners, EW Healthcare Partners and SWK.

- Ophthalmology represents a large and growing therapeutic category with a sizable market, favorable demographics due to an aging population, and significant unmet clinical needs.
- DEXYCU offers a unique value creation opportunity, especially with the experience of pSivida's CEO, Nancy Lurker, who has built multiple sales and marketing organizations that have successfully commercialized numerous products. The Company is well positioned to capitalize on DEXYCU and the potential Durasert opportunity.
- pSivida and its strategic partners will remain opportunistic in evaluating additional ophthalmology assets.

MTS Health Partners, L.P. served as pSivida's financial advisor in connection with the transaction and its affiliate, MTS Securities LLC, provided the pSivida board of directors with a fairness opinion. Torreya Partners served as the advisor to pSivida on the debt financing. Hogan Lovells US LLP acted as pSivida's legal advisor and Danforth Advisors, LLC acted as pSivida's corporate finance advisor.

EW Healthcare Investment

EW Healthcare Partners and a third party investor will provide pSivida with funding in two tranches totaling $35 million, approximately $25.5 million of which is subject to the approval of the Company's stockholders. EW Healthcare Partners and a third party investor also have an option, subject to the approval of the Company's stockholders, to make an additional investment of approximately $25.5 million for a total of up to $60.5 million.

- In the first tranche, which closed concurrently with the Icon acquisition, EW Healthcare Partners purchased 8,606,324 shares of pSivida common stock.
- In the second tranche, which is subject to stockholder approval, EW Healthcare Partners and a third party investor will purchase approximately $25.5 million of the Company's common stock and receive a warrant to purchase an additional approximately $25.5 million of the Company's common stock. The warrant will be cash-exercise only and exercisable no later than 15 business days after the issuance of a pass-through reimbursement code for DEXYCU.

Ron Eastman, a Managing Director with EW Healthcare Partners, who will immediately join pSivida's Board of Directors, said, "EW Healthcare Partners is pleased to have the opportunity to invest in Nancy Lurker and her team as they drive the growth and transformation of EyePoint Pharmaceuticals into a fully integrated specialty biopharmaceutical company. Nancy has a strong track record of building successful commercial organizations, and we look forward to continuing to support the Company as it capitalizes on DEXYCU, Durasert and other potential ophthalmology opportunities."

SWK Investment

pSivida also entered into a $20 million senior secured, non-dilutive term loan agreement with SWK Funding LLC and its partners. SWK Funding LLC is a subsidiary of SWK.

"We are pleased to partner with pSivida and are fully committed to working with the team to build a leading business in ophthalmology," said Winston Black, CEO, SWK. "Nancy has a proven track record of successfully commercializing products and we believe pSivida has a very attractive future."

EyePoint Pharmaceuticals Marks the Transformation of pSivida

"Today's announcements significantly accelerate the transformation of pSivida into a specialty biopharmaceutical company with the potential to launch two ophthalmic products in the first half of 2019 with the FDA approval of DEXYCU, and active regulatory review of Durasert micro-insert for posterior segment non-infectious uveitis. Our goal is to leverage the commercial infrastructure we are building and become a sustainable growth company," said Nancy Lurker President and CEO. "Our rebranding and name change reflect the tremendous progress we've made and embody the momentum at EyePoint Pharmaceuticals. Our goal is to establish EyePoint Pharmaceuticals as a leader in developing and launching innovative ophthalmic products in indications with high unmet medical need to improve the lives of patients with serious eye disorders. We are pleased to partner with EW and SWK to assure that we have not only the funding to achieve our goals, but also the deep strategic and healthcare domain expertise to ensure our ability to execute on our strategy."

DEXYCU is the first long-acting intraocular product approved by the FDA for the treatment of postoperative inflammation. Cataract surgery is the most frequent surgical procedure in the U.S., with over four million performed annually. The primary endpoint of the DEXYCU placebo-controlled Phase 3 program was to assess the percent of patients achieving total

anterior chamber cell (ACC) clearance at post-surgical Day 8. The percentage of patients with ACC clearance at post-surgical Day 8 was 60% in the DEXYCU treated group versus 20% in the placebo group. The most commonly reported adverse reactions occurring in 5-15% of subjects included an increase in intraocular pressure, corneal edema, and iritis.

“DEXYCU offers surgeons a new option to treat post-surgical inflammation with a single injection following surgery, thereby potentially eliminating the need for patients to administer a complex regimen of steroid drops for up to 4 weeks post-surgery which many patients have difficultly adhering to,” said Dr. Cynthia Matossian, MD, FACS, who is the founder and Chief Executive Officer of Matossian Eye Associates.

EyePoint Pharmaceuticals will trade under the new NASDAQ ticker symbol “EYPT” effective April 2, 2018. The former ticker symbol “PSDV” will remain effective through the market close on March 29, 2018. The new website for EyePoint Pharmaceuticals is www.eyepointpharma.com.

ASX Delist

pSivida has requested that its shares be delisted from trading on the Australian Securities Exchange. Due to a significant decrease in the proportion of the Company’s common stock held by Australian shareholders, low trading activity and the costs of maintaining the listing, the Board of Directors of pSivida after careful consideration has determined that there are minimal benefits to maintaining its listing on the ASX and that it would be in the best interests of the Company and its shareholders to delist.

Conference Call

pSivida Corp. will host a live webcast and conference call tomorrow, March 29, 2018, at 8:00 a.m. ET. The conference call may be accessed by dialing (877) 312-7507 from the U.S. and Canada, or (631) 813-4828 from international locations. The conference ID is 6188674. A live webcast will be available on the Investor Relations section of the corporate website at http://www.psivida.com.

A replay of the call will be available beginning March 29, 2018, at approximately 10:30 a.m. ET and ending on April 30, 2018, at 11:59 a.m. ET. The replay may be accessed by dialing (855) 859-2056 within the U.S. and Canada or (404) 537-3406 from international locations, Conference ID Number: 6188674. A replay of the webcast will also be available on the corporate website during that time.

About Icon Bioscience and Verisome®

Icon Bioscience Inc. was previously a privately held specialty biopharmaceutical company focused on the development and commercialization of unique ophthalmic pharmaceuticals based on its patented and proprietary Verisome® extended-release drug delivery technology. On February 9, 2018, the United States Food and Drug Administration (FDA) approved Icon Bioscience’s New Drug Application (NDA) for DEXYCU™ (dexamethasone intraocular suspension) 9%, a dropless, long-acting therapeutic for treating inflammation associated with cataract surgery. DEXYCU is the first long-acting intraocular product approved by the

FDA to treat post-surgical inflammation. Cataract surgery is the most frequent surgical procedure performed in the U.S., with over four million procedures annually. Under current standard of care for inflammation associated with this surgery, patients assume the post-surgical responsibility of self-administering medicated eye drops, several times daily for up to 4 weeks. DEXYCU breaks new ground in the post-surgical treatment of inflammation because it is applied as a single injection at the conclusion of surgery. For additional information visit the Icon website at www.iconbioscience.com.

About EW Healthcare Partners

With over $3.0 billion under management, EW Healthcare Partners is one of the largest and oldest growth equity firms pursuing investments in pharmaceuticals, medical devices, healthcare services, and healthcare information technology. Since its founding in 1985, EW Healthcare Partners has maintained its singular commitment to the healthcare industry and has been involved in the founding, investing, and/or management of over 150 healthcare companies, ranging across sectors, stages, and geographies. The team is comprised of over 20 senior investment professionals with offices in New York, London, Palo Alto and Houston.

About SWK Holdings Corporation

SWK Holdings Corporation is a publicly traded, specialized finance company with a focus on the global healthcare sector. SWK partners with ethical product marketers and royalty holders to provide flexible financing solutions at an attractive cost of capital to create long-term value for both SWK's business partners and its investors.

About EyePoint Pharmaceuticals

EyePoint Pharmaceuticals (formerly pSivida Corp.) (www.eyepointpharma.com), headquartered in Watertown, MA, is a specialty biopharmaceutical company committed to developing and commercializing innovative ophthalmic products in indications with high unmet medical need to help improve the lives of patients with serious eye disorders. The Company has developed three of only four FDA-approved sustained-release treatments for back-of-the-eye diseases. In addition, DEXYCU™ was approved by U.S. Food and Drug Administration (FDA) on February 9, 2018. DEXYCU is administered as a single intraocular dose at the end of ocular surgery for postoperative inflammation and it is the first and only FDA approved intraocular product with this indication. ILUVIEN® (fluocinolone acetonide intravitreal implant), a micro-insert for diabetic macular edema, licensed to Alimera Sciences, is currently sold directly in the U.S. and several EU countries. Retisert ® (fluocinolone acetonide intravitreal implant), for posterior uveitis, is licensed to and sold by Bausch & Lomb. The New Drug Application (NDA) for our lead product candidate, Durasert™ micro-insert for the treatment of non-infectious uveitis affecting the posterior segment of the eye, has been accepted for filing by the FDA and is currently under standard review with a Prescription Drug User Fee Act (PDUFA) date of November 5, 2018. The Company's pre-clinical development program is focused on using its core Durasert platform technology to deliver drugs to treat wet age-related macular degeneration, glaucoma, osteoarthritis and other diseases. To learn more about the Company, please visit www.eyepointpharma.com and connect on Twitter, LinkedIn, Facebook and Google+.

INDICATION: DEXYCU (dexamethasone intraocular suspension) 9% is indicated for the treatment of postoperative inflammation. IMPORTANT SAFETY INFORMATION: CONTRAINDICATIONS – None. WARNINGS AND PRECAUTIONS – Increase in Intraocular Pressure – Prolonged use of corticosteroids, including DEXYCU, may result in glaucoma with damage to the optic nerve, defects in visual acuity and fields of vision. Steroids should be used with caution in the presence of glaucoma. Delayed Healing – The use of steroids after cataract surgery may delay healing and increase the incidence of bleb formation. In those diseases causing thinning of the cornea or sclera, perforations have been known to occur with the use of corticosteroids. Exacerbation of Infection – The use of DEXYCU, as with other ophthalmic corticosteroids, is not recommended in the presence of most active viral diseases of the cornea and conjunctiva including epithelial herpes simplex keratitis (dendritic keratitis), vaccinia, and varicella, and also in mycobacterial infection of the eye and fungal disease of ocular structures. Use of a corticosteroid in the treatment of patients with a history of herpes simplex requires caution and may prolong the course and may exacerbate the severity of many viral infections. Fungal infections of the cornea are particularly prone to coincidentally develop with long-term local steroid application and must be considered in any persistent corneal ulceration where a steroid has been used or is in use. Fungal culture should be taken when appropriate. Prolonged use of corticosteroids may suppress the host response and thus increase the hazard of secondary ocular infections. In acute purulent conditions, steroids may mask infection or enhance existing infection. Cataract Progression – The use of corticosteroids in phakic individuals may promote the development of posterior subcapsular cataracts. ADVERSE REACTIONS – The most commonly reported adverse reactions occurred in 5-15% of subjects and included increases in intraocular pressure, corneal edema and iritis. Please see full Prescribing Information.

SAFE HARBOR STATEMENTS UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995: Various statements made in this release are forward-looking, and are inherently subject to risks, uncertainties and potentially inaccurate assumptions. All statements that address activities, events or developments that we intend, expect or believe may occur in the future are forward-looking statements. Some of the factors that could cause actual results to differ materially from the anticipated results or other expectations expressed, anticipated or implied in our forward-looking statements include uncertainties with respect to: our ability to achieve profitable operations and access to needed capital; fluctuations in our operating results; successful commercialization of, and receipt of revenues from, ILUVIEN® for diabetic macular edema (“DME”), which depends on Alimera’s ability to continue as a going concern; Alimera’s ability to obtain marketing approvals and the effect of pricing and reimbursement decisions on sales of ILUVIEN; the number of clinical trials and data required for the Durasert technology for the treatment of non-infectious uveitis affecting the posterior segment of the eye, uveitis marketing application approval in the U.S.; our ability to use data in promotion for Durasert micro insert for the treatment of non-infectious uveitis affecting the posterior segment of the eye, U.S. NDA approval which includes clinical trials outside the U.S. U.S. NDA including clinical trials outside the U.S.; our ability to successfully commercialize DEXYCU in the U.S.; our ability to obtain stockholder approval

for portions of the EW and SWK investments; our ability to successfully commercialize Durasert three-year uveitis, if approved, in the U.S.; potential off-label sales of ILUVIEN for uveitis; consequences of fluocinolone acetonide side effects; the development of our next-generation Durasert shorter-duration treatment for posterior segment uveitis; potential declines in Retisert® royalties; efficacy and the future development of an implant to treat severe osteoarthritis; our ability to successfully develop product candidates, initiate and complete clinical trials and receive regulatory approvals; our ability to market and sell products; the success of current and future license agreements, including our agreement with Alimera; termination or breach of current license agreements, including our agreement with Alimera; our dependence on contract research organizations, vendors and investigators; effects of competition and other developments affecting sales of products; market acceptance of products; effects of guidelines, recommendations and studies; protection of intellectual property and avoiding intellectual property infringement; retention of key personnel; product liability; industry consolidation; compliance with environmental laws; manufacturing risks; risks and costs of international business operations; effects of the potential U.K. exit from the EU; legislative or regulatory changes; volatility of stock price; possible dilution; absence of dividends; and other factors described in our filings with the Securities and Exchange Commission. You should read and interpret any forward-looking statements in light of these risks. Should known or unknown risks materialize, or should underlying assumptions prove inaccurate, actual results could differ materially from past results and those anticipated, estimated or projected in the forward-looking statements. You should bear this in mind as you consider any forward-looking statements. Our forward-looking statements speak only as of the dates on which they are made. We do not undertake any obligation to publicly update or revise our forward-looking statements even if experience or future changes makes it clear that any projected results expressed or implied in such statements will not be realized.

Contact:

Barbara Ryan – Investor
Barbara@barbararyanadvisors.co
203-274-2825

Thomas Gibson – Media
tom@tomgibsoncommunications.com
201-476-0322